

A SECOND
CONTINUATION
(Down to *Michaelmas* Sessions 1776)
OF THE
DECISIONS of the COURT of *King's Bench*
UPON
SETTLEMENT-CASES;
Including the *four last* Years:
WITH
An ABRIDGMENT of EACH Case,
A DIGEST of the WHOLE,
AND
Two TABLES of the NAMES of the Cases.

Published for the Use of JUSTICES OF THE PEACE,
and BARRISTERS and Others attending the Quarter Sessions.

By SIR JAMES BURROW.

L O N D O N :
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CONTINUATION

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P R E F A C E.

THOUGH the present System of the Poor-Laws is not perhaps the best that might have been or now may be contrived, yet (even such as it is) the Inconvenience arising from its being uncertain, unsettled, and unknown, was an additional Objection.

TIME, however, and repeated Discussion, together with the Industry of those Gentlemen who (at several Periods) have collected and published the Determinations of the Judges upon this Subject, have by Degrees cleared off a great Deal of the Mist; and PERSEVERANCE may clear it quite away.

CERTAINTY is a Requisite in all Laws; and NOTIFICATION of such judicial Decisions as serve to explain and ascertain them, seems equally requisite: It must, at least, be useful to those Magistrates who are continually called upon, to put these Laws in Execution.

P R E F A C E.

To the Attainment of this very desirable End, I have endeavoured to contribute, by *adding* to the List of former Cases heretofore communicated to the Public, a more recent (and I hope I may say authentic) List of *all* the Adjudications upon Parish-Settlements, that have been made within the Compass of the last three and forty Years and upwards; together with an ABRIDGMENT of *each Case*, and a DIGEST of *the whole*. Which Labour I shall not at all regret, if I may flatter myself with the Hope of its being favourably received by those worthy Gentlemen who act in the Commission of the Peace; and whose generous and disinterested Attention to the Good of the Community certainly merits, and has a Right to claim, all the Information and Assistance that any one may have it in his Power to give them.

Inner-Temple,
29th September 1776.

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FURTHER

FURTHER CONTINUATION
OF THE
DECISIONS
OF THE
COURT of KING's BENCH
UPON
SETTLEMENT-CASES:

Being an ADDITION of a second FOUR Years;

Which completes a Series of more than Forty-three Years, and
brings them up to *Michaelmas Term* 1776, 17 G. 3.

Michaelmas Term

13 Geo. 3. 1772.

Rex *vers.* Inhabitants of Navestock.

No. 222.

TWO Justices removed *Thomas Fair* and *Martha* his Wife, Tuesday 24th
and *Martha* and *John* their Children under seven Years November
of Age, from *Navestock* in *Essex* to *Stondon Massey* in the 1772.
same County. The Sessions, upon Appeal, set aside their Or-
der, as far as relates to *John*, one of the Children; it plainly
appearing to them "that the said *John* was not last legally settled
" in the said Parish of *Stondon Massey*." And the Sessions, being
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also of Opinion "that the said *Thomas Fair* and *Martha* his Wife, "and *Martha* one of the Children, were likewise not legally settled in the said Parish of *Stondon Massey*," doth also set aside the said Order of the said two Justices, *as far* as relates to them the said *Thomas* and his Wife and *Martha* their Daughter: And it is Ordered by the Sessions, to be set aside accordingly; but subject, nevertheless, in respect of the Settlement of the said *Thomas Fair* and his Wife and Daughter, to the Opinion of his Majesty's Court of King's Bench on the following special Case, *viz.*

It appears to this Court, [the Sessions,] that the Husband *Thomas Fair*, the Pauper, prior to his said Marriage, at *Ongar Statute-Fair* in this County, did, on the *Day NEXT AFTER old Michaelmas-Day*, *viz.* on the *eleventh* Day of *October* in the Year 1733, let himself to *Samuel Possford* of *Navesstock* in the said County, to serve *TILL the Michaelmas-day* following, old *Stile*, at the Wages of — *l.* That the Pauper entered upon the said Service, and *continued* in it until the *old Michaelmas-day* following: Upon which Day, he received his Wages and *quitted* the said Service. It appearing to be according to the *Custom and Usage of the Country*, to hire Servants at the said *Statute-Fair*, *viz.* the *Day after old Michaelmas-Day*, in the *Manner* this Pauper was hired, the Opinion of this Court is, "that the Pauper gained a Settlement in *Navesstock*, by the Hiring and Service above stated," and doth therefore *quash* the Order of the two Justices; subject to the Opinion of the Court of King's Bench on the Question, "Whether the *Hiring*, as above stated, is a *sufficient* *HIRING FOR A YEAR*, to give the Pauper a Settlement."

On *Tuesday* the 7th of *July* 1772, Mr. *Dodd* moved, on behalf of the Parish of *Navesstock*, to quash this Order of Sessions; for that this was *no Hiring for a Year*: It is a Day short of a Year. The Acts of Parliament positively require a * *Hiring for a Year*, and a *Serving for a Year*: And the Custom and Usage of the Country can't control a positive Act of Parliament. In Proof of which, he cited the Case of *South Cerney* (*v. ante*, p. 158, and p. 670.) where the Pauper was hired on the *Wednesday* after *Michaelmas*, to serve to the *Michaelmas* following; which he did accordingly, and received his Wages: And it was argued that this made a sufficient Settlement, as the Hiring was according to the *Custom and Usage of the Country*, at the usual Time of hiring Servants for the following Year. But it was ruled by the Court

* V. 3, 4 W.
& M. c. 11.
§ 7 and 8,
9 W. 3. c.
30. § 4.

Court, "that this is *no* Settlement, upon the Face of it. There " must be a Hiring for a Year : And that *can't be dispensed with.*" And they refused even a Rule to shew Cause. [See also a like Case, *ante*, p. 157. No. 55. *Rex v. Inhabitants of Newton*. But also see p. 669. No. 208. *Rex v. Inhabitants of Newstead*; where a Hiring to serve from *Whitsuntide* to *Whitsuntide* was holden sufficient; it being stated to be usual in that Country, and always deemed a Year's Service, without regard to it's being more or less than 365 Days. See likewise *Rex v. Inhabitants of Bray*, *ante*, p. 682. No. 214 and *Rex v. Inhabitants of Syderstone cum Bermer*, 30th April 1777.]

Mr. *Dodd* said, this was a Doubt in all the Sessions throughout *England*: And this Case is brought hither, in order to settle it.

On *Tuesday* the 24th of *November* 1772, Mr. *Mansfield* and Mr. *Lucas* shewed Cause. They argued that here appeared to be a complete Hiring for a Year, and Service for a Year. But if it should be admitted that a Day was wanting, according to absolute rigid Strictness of Computation, yet the express Stating it to be, "*according to the Custom and Usage of the Country,*" made it a sufficient Hiring for a Year, to give the Pauper a Settlement. And so it was determined in the Case of *Newstead*, *

* *Ante*, No.

Mr. *Dodd*, supported by Mr. *Wallace*, argued that it was not a sufficient Hiring, to give a Settlement; and cited the *Cumberland* Case of *Rex v. Inhabitants of Lowther*, *ante*, p. 674. No. 210. to shew that the Custom and Practice of a Country can't supply the Want of a Hiring for a Year. The Case of *Newstead* was not, they said, to be objected to them: For, the Hiring is there expressly stated to be "*to serve for a Year*;" though (as the Court themselves there observe,) the Words "*from the said Whitsuntide to Whitsuntide* following" are added. So that the Court considered that as a Hiring for a complete Year. But this is only from the Day after *Michaelmas-Day* till the *Michaelmas-day* following: Which manifestly falls short of a Year.

LORD MANSFIELD—There must be a Hiring for a Year. If the Hiring be for less than a Year, it will not do; be the Deficiency ever so little: Two Days, or one Day short of a Year, are equally an Objection to its being a Hiring for a whole Year.

The Sessions have left it to this Court to determine "Whether " the Hiring here stated is a sufficient Hiring, to give the Pauper a Settlement."

Hiring from a moveable Feast to a moveable Feast, according to the Custom of the Country, has been determined to be a Hiring for a Year. And here they have stated the Custom and Usage of the Country, to hire Servants in the Manner this Pauper was hired; namely, at the Statute-Fair, the Day after old Michaelmas. If this should be taken *not to be* a Hiring for a Year, there can be no Settlement gained in this Country, by a Servant: For, all Servants in this Country are hired as the present Pauper was hired. Therefore it seems no Stretch, to consider this as a Hiring from Michaelmas to Michaelmas. And the Man immediately entered upon his Service, and continued in it till the following Michaelmas-day, and received his Year's Wages.

Mr. Justice ASTON and Mr. Justice WILLES, the only other Judges then in Court, entirely concurred in the same Sentiments with his Lordship. Whereupon

THE COURT unanimously DISCHARGED the RULE,
and AFFIRMED the ORDER of SESSIONS.

No. 223.

Rex *vers.* Inhabitants of East Illey.Saturday 28th
Nov. 1772.

TWO Justices had removed *James Allen* and his Wife from *East Illey* in *Berkshire* to *Weybridge* in *Surrey*. Upon an Appeal from their Order, the Sessions had reversed it; having first stated the following Facts.

James Allen, the Pauper, was in *June 1768* hired, at a Place called *Barrows Brook* in *Gloucestershire*, as a *Groom*, for one Year certain, to the Earl of *Portmore* (who had then a Seat at *Weybridge* aforesaid,) by one *Thomas Bell*, then a Servant to the said Earl, at the Rate of three Pounds and three Shillings and a Livery, for the Year; to look after the said Earl's *Running Horses*, which then stood at the said *Thomas Bell's* at *Barrows Brook* aforesaid. That he lived, the former Part of that Year, at *Barrows Brook* aforesaid; and went from thence, with the said Horses, to the Parish of *Marrow* in *Surrey*; where he stayed the Remainder of that Year, within about twenty Weeks; and received his Year's Wages. During all that Year, he was an Attendant on the said Earl's *Running Horses*; and never once was at *Weybridge* during all that Year. At the Expiration of the said Year, he
was

was again hired, at *Marrow* aforesaid, as a Groom, for another Year certain, to the said Earl of *Portmore*, by one *Jenkins*, Steward to the said Earl, at the Rate of six Pounds and six Shillings and a Livery for that Year; still to look after the said Earl's Running Horses. He stayed with the said Horses, at *Marrow*, for some short Time: From whence he went, with the said Horses, to *Weybridge* aforesaid; where he stayed about three Weeks, and then went from thence to *East Ilsley* aforesaid, with the said Horses; where he remained about *ten Weeks*. He went, with the said Horses, to *Ebbison* Races in *Surrey*; where he stayed about ten Days. He then returned, with the said Horses, to *Weybridge* aforesaid; where he remained about three Weeks. He then went from thence to *Marrow* aforesaid, with the said Horses; where he stayed about *twenty Weeks*; during which, his second Year expired; and he received that Year's Wages, and continued under that last Hiring, in the Capacity of a Groom and to attend the said Earl's Running Horses, for another Year, without making any fresh Contract. He went from *Marrow* to *East Ilsley* aforesaid, with the said Horses; and continued with them there, at one *William Frogley's* in the said Parish of *East Ilsley*, for the Space of *ten Months*; when the said *William Frogley* paid him his Wages, by the said Earl's Orders; And thereupon he was discharged from the said Earl's Service. During all the said three Years, he never served the said Earl in any other Capacity but as a Groom, to look after and ride the said Horses; and never was once at *Weybridge* during the last Year, nor hath ever gained any legal Settlement since. It is stated, that the Pauper did not serve the said Earl of *Portmore* at *Weybridge* aforesaid, for the Space of *forty Days* TOGETHER at any one Time; but did serve the said Earl at other Places, for the Space of *forty Days* together at one Time. The Order of Sessions also stated, that it appeared by the Evidence of the said *James Allen*, that *East Ilsley* is a Public Place for exercising and training of Running Horses; and that the Earl of *Portmore* had not any House in *East Ilsley* aforesaid, nor any ESTATE there. Upon hearing Counsel and the Merits, The Sessions order, that the Original Order be reversed, and the Appeal allowed; referring, however, (by Consent of both Sides) their Order of Reversal, together with the Merits, to the Judgment of this Court.

On *Saturday* the 23d of *May* 1772, Mr. *Thornton* moved, on behalf of the Parish of *Ilsley*, to quash this Order of Sessions;

Proposing it as a Question, "whether a *Groom* residing at a public Place, where his Master had no House nor Estate, merely for the Purpose of training Race-horses, should gain a Settlement at that public Place."

Mr. *Vanfittart* and Mr. *Cox* now shewed Cause why the Order of Sessions should not be quashed.

They denied this to be a public Place. Besides, if it were so, yet it is here used for a private Purpose, of training Horses. The last forty Days Service was performed here: And there are no Circumstances to take this Case out of the General Rule. They cited the Cases of the Huntsman who gained a Settlement in *St. Peter's* in *St. Alban's*, where his Master had no Settlement; and the Stage-Coach-Driver who gained a Settlement in *Chipping-Wycomb*, where he performed his Service, and where his Master never resided: (Both which Cases may be seen *ante*, pa. 423 and 424.)

However, it was enough for them, they said, to shew that the Pauper did *not* gain a Settlement at *Weybridge*. Now, first, he never served there forty Days together. Secondly, he served twenty Weeks at *Marrow*; and his second Year then expired. Thirdly, he never was once at *Weybridge* during the last Year. So that there was no Settlement at all at *Weybridge*.

Mr. *Wallace* and Mr. *Davenport* attempted to support Mr. *Thornton* in attacking the Order of Sessions.

But THE COURT were unanimous, that it was a right One: And LORD MANSFIELD observed, that it was just the Case of the Huntsman, mentioned in the Case of Sir *Harry Calthorpe's* Servant, *ante*, p. 423, 424.

THE RULE WAS DISCHARGED; and THE ORDER of SESSIONS AFFIRMED.

Hilary Term

13 Geo. 3. 1772.

Rex *versus* Inhabitants of Bryngwyn.

No. 224.

MR. *Bearcroft* had moved, on *Saturday* the 28th of *November* Monday 8th 1772, to quash an Order of Sessions which confirmed an Feb. 1773. Order of two Justices, made for the Removal of *Richard Hobly*, *Jane* his Wife, and their four Children, from *Gladeſty* in *Radnorſhire* to *Bryngwyn* in the ſame County; and had a Rule to ſhew Cause.

Mr. *Baldwin*, who was now to have ſhewn Cause, acknowledged that it was a good Purchase, and that he could not ſupport the Orders.

BOTH ORDERS QUASHED.

N. B. I only mention this Caſe here; that it may be known to have been given up without Argument.

Rex *versus* Inhabitants of Aſton Keynes.

No. 225.

MR. *Morris* had moved, on *Thursday* the 28th of *January* Tuesday 9th 1773, to quash an Order of Sessions which quashed an Feb. 1773. Order of two Justices, made for the Removal of *William Meſſenger*, Miller, and *Martha* his Wife, and their four Children, from *Aſton Keynes* in *Wilts* to *South Cerney* in *Glouceſterſhire*.

The Caſe ſtated upon the Order of Sessions was—That in *January* 1739, *Richard Meſſenger*, the Father of the Pauper *William Meſſenger*, together with *Mary* his Wife and *Richard Meſſenger* his

his Son, went from the said Parish of *South Cerney* to the said Parish of *Ashton Keynes*, and lived there, under the following Instrument or Paper-Writing, as a Certificate—" *Gloucestershire*—" To the Churchwardens and Overseers of the Poor of the Parish of *Ashton Keynes* in the County of *Wilts*—We the Churchwardens and Overseers of the Poor of the Parish of *South Cerney* in the County of *Gloucester* do hereby own and acknowledge *Richard Messenger* and *Mary Messenger* his Wife, their Child *Richard Messenger*, his Son, aged half a Year old, and all Heirs of her Body begotten by the said *Richard Messenger*, to be Inhabitants legally settled in our said Parish of *South Cerney* in the County of *Gloucester*, and to be Parishioners there. In witness whereof, we the said Churchwardens and Overseers of the Poor of the Parish of *South Cerney* have hereunto respectively set our Hands and Seals, the 28th Day of *January* 1739, 40.

Attested by
Anthony O' Brown
 his $\times$ Mark
Paul Jenkinson.

— O' Church-
William Haskins O' wardens.
Henry Cook O'
John Harris O' Overseers.

We whose Names are hereunto subscribed, Two of his Majesty's Justices of the Peace for the said County of *Gloucester*, do hereby Certify that he the said *P. Jenkinson* came before Us, this Day, and made Oath that he was present with the other Witnesses above mentioned, and did see the said Churchwardens and Overseers severally sign and seal the said Certificate; and that his Name is of his own proper Hand-Writing. And we do allow of the Certificate above-written. Given under our Hands, the 28th Day of *January* 1739.

Robert Sandford.
Joseph Smalle.

And it further appearing, that the said *Richard Messenger* the Father never gained any Settlement in the said Parish of *Ashton Keynes*; and that the Pauper *William Messenger* was born in the said Parish of *Ashton Keynes*, but has never done any Act to gain any legal Settlement;

And it appearing to this Court, [the Sessions,] by the said Paper-Writing, that the Name or Mark of *Anthony Brown*, one of the Witnesses attesting the Execution of the same, was not proved before the Justices allowing the same, to be of his own proper Hand-Writing; This Court [the Sessions] is therefore of Opinion
 " that

“ that the said Paper-Writing is NOT a proper Certificate ;” and doth adjudge that the said Order of Removal be quashed.

Mr. *Morris*'s Objection to this Order of Sessions was, that the Certificate was a sufficient one; and, consequently, the Parish of *South Cerney* were bound by it.

Mr. *Wallace* and Mr. *Wilson* now shewed Cause against quashing the Order of Sessions. They argued that this Paper-Writing (as they called it) was not a proper Certificate, such as was required by the 8 & 9 W. 3. c. 30. § 1. because the Name or Mark of *Anthony Brown*, one of the Witnesses attesting the Execution of it, was not proved before the Justices who allowed it, to be of that *Witness's own proper Hand-Writing*. They urged, that the Act of Parliament of 3 G. 2. c. 29. Sect. 8. requires, that the Witnesses who attest the Execution of the Certificate, or one of them, shall make Oath before the Justices who allow it, “ that such Witness or Witnesses did see the Execution of it; and that the Names of such WITNESSES attesting the said Certificate are of their own proper Hand-Writing.” Whereas, in this Case *Paul Jenkinson* (one of the Witnesses) only proves that his own Name is of his own Hand-Writing: But there is no Sort of Proof, either by him or by any one else, of the Hand-Writing or Mark of *Anthony Brown*, the other Witness. Therefore the Sessions did right, they said, in disallowing this as a proper Certificate. And they cited the Case of *Barleycroft and Coleoverton* in 1 Sir *John Strange* 402. and *Rex v. Inhabitants of Wooton St. Lawrence*, ante, No. 187.

But THE WHOLE COURT were extremely clear, “ that there was sufficient Proof of *Anthony Brown's* Attestation.” *Jenkinson* swears “ that he was present with *Brown*; and did see the Churchwardens and Overseers severally sign and seal the said Certificate.” And this is above thirty Years ago. It would be very unreasonable, that the Parish who gave this Certificate so long ago, should quibble it off, in this Manner, now.

ORIGINAL ORDER AFFIRMED :
ORDER OF SESSIONS QUASHED.

No. 226. Rex *versus* Inhabitants of St. Margaret's in Lincoln.Thursd. 11th
Feb. 1773.

ON the last Day of last Term, (*Saturday* next after fifteen Days from the Day of *St. Martin*, 13 G. 3.) a Rule was made, upon the Motion of Mr. *Wills*, to shew Cause why the original Order of two Justices made for the Removal of *Esther Johnson*, Single-Woman, from the Parish of *St. Mary* in *Wigford* in the City of *Lincoln*, to the Parish of *St. Margaret*; (Part thereof being in the County of *Lincoln*, and Part in the City of *Lincoln*;) and also the Order of Sessions made in Confirmation thereof; should not be quashed, for the Insufficiency thereof.

The special Case stated by the Sessions, upon Appeal to them by the Parish of *St. Margaret*, from the original Order of Removal, was as follows—

It appears to this Court [the Sessions] that the Pauper, *Esther Johnson*, was, by *Indenture* duly executed, and bearing Date the 1st Day of *May* 1767, being at that Time a *poor Child* of the Parish of *St. Martin* in the said City, and then of the Age of *fourteen* Years or thereabouts, BOUND APPRENTICE by the major Part of the then *Churchwardens and Overseers of the Poor* of the Parish of *St. Martin*, with the Consent of *John Horton* and *John Brown*, Gentlemen, two of his Majesty's Justices of the Peace of and for the said City, (one whereof was of the Quorum,) to *Mark Johnson* of the Parish of *St. Mary Wigford* in the said City of *Lincoln*, described in the said *Indenture* to be a *Labourer*; to learn the Art and Mystery of a *HOUSEWIFE*, and with her said Master to dwell, and him to serve, from the Date of the said *Indenture*, till she should accomplish the Age of 21 Years, or Day of Marriage.

That the said *Esther Johnson* did go to and reside with her said Master *Mark Johnson*, in the Parish of *St. Mary Wigford* aforesaid, under the said *Indenture*, from the Date thereof till the Month of *October* 1769; when the said *Mark Johnson* entered into an Agreement with *John Morley* of the Parish of *St. Peter* in *East-Gate* in the said City of *Lincoln*, *Coal-Porter*; to which Agreement the *Parish-Officers* of *St. Martin* aforesaid were neither Parties nor privy, for assigning his said Apprentice to the said *John Morley*: And thereupon, the said *Mark Johnson* did sign his Consent or Agreement

Agreement in Writing upon the Back of the said Indenture of Apprenticeship, in the Words and Figures following, viz. "I do hereby consent, that the within named *Esther Johnson* shall serve *John Morley* of the Parish of *St. Peter* in *East-Gate* in the City of *Lincoln*, Coal-Porter, for the *Remainder* of the Term, and under the Covenants and Agreements contained in the within written Indenture. Witness my Hand, this 12th Day of *October* 1769. The Mark ✕ of *Mark Johnson*. Witness, *Henry Rutter*."

That the said Indenture of Apprenticeship, immediately after such Consent or Agreement as aforesaid was indorsed thereon, was delivered by the said *Mark Johnson* to the said *John Morley*; who thereupon received the said *Esther Johnson* into his Service in the Parish of *St. Peter* aforesaid, as his own Apprentice: Where she continued for the Space of *six Months* and upwards; when the said *Morley* agreed with one *Mr. Thomas Masters*, Master of a cold Bath, who had married his Daughter and then lived with his Wife and Family in a House situate in the Parish of *St. Margaret*, to LEND the said *Esther Johnson* to him the said *Thomas Masters*. That *Masters* accordingly received her into his House in the said Parish of *St. Margaret*; where she continued to abide and serve him for the Space of one Year and an half, with the Consent of the said *John Morley*: And that the Master, being discontented with her Behaviour, turned her out of Doors. Upon which, she returned, and offered herself again to the said *John Morley*, as his Apprentice: But *Morley* refused to receive her into his House; and having her Indenture of Apprenticeship then in his Possession, he gave it up to her. Whereupon, being destitute of all other Support, she went to her Father, who was a very poor Man and at that Time lived in a small House, by himself, in the said Parish of *St. Mary* in the said City of *Lincoln*.

That her said Father received her into his House; but, being unable to maintain her, applied several Times to the Parish-Officers of *St. Mary*, to get her removed to her proper Place of Settlement; and at length, after she had been with her said Father about six Months in the said Parish of *St. Mary*; and before the Term mentioned in her Indenture of Apprenticeship was expired, viz. when she was about nineteen Years old, the Churchwardens and Overseers of the Poor of the said Parish of *St. Mary* carried her before two Justices of the said City of *Lincoln*: Who made the Order above stated, for removing her to the said Parish of

St. Margaret, as to the Place of her last legal Settlement; her *first Master*, the said Mark Johnson, (who at the Time of such Removal lived with his Family in another House in the said Parish of St. Mary,) as also the said John Morley, having each of them *refused to receive her* into his Service.

That the Place of the last legal Settlement of the said *Esther Johnson* is in the said Parish of St. Margaret, by Reason of her having *served the said Mr. Masters*, with the *Consent of the said John Morley*, in the said Parish, for the Space of *one Year and six Months*: And that the said two Justices, in sending her thither, have acted agreeable to Law.

Therefore the Sessions *confirm* the original Order.

Mr. *Wills* took several Exceptions to these Orders: The two principal of which, (and the only ones which the Court entered into,) were, 1st. That this Binding of the poor Child by the Parish-Officers was to an Inhabitant of *another* Parish; which, he said, they could not do: They could only bind out a Parish-Child to an Inhabitant of their *own* Parish. 2d Exception, The Person to whom she was bound, in order to learn Housewifery, was only a *Day-Labourer*; who assigned her, without the Privy of the Parish-Officers, to a Coal-Porter; and he lent her to a Quack-Doctor: Which Mr. *Wills* argued to be fraudulent and void. He cited several Cases, and (amongst the rest) *Rex v. Inhabitants of Austrey, ante, No. 142.*

Mr. Serjeant *Hill* now shewed Cause. He argued, that the Child might be bound out to an Inhabitant of *another* Parish, by the Parish-Officers, at their Discretion, as well as to an Inhabitant of their own Parish: The Justices are the proper Check upon the Conduct of the Parish-Officers*. *Fraud* can't be presumed: And here none is found. But, at furthest, the Order can't be more than voidable, not void: And the Pauper has served under it. *Johnson's* Assignment of her to *Morley* at least operated as a *Consent*: And the Assent of the Parish-Officers was not necessary. Her Residence with her Father, in *St. Mary's*, was not under the Indenture, nor with the Consent of her Master. It was so far from being under a special particular Consent of the Master, that it had not even his general Licence "to go where she pleased." Her Settlement was clearly in *St. Margaret's*; where she served a Year and an half with the Consent of *Morley*. He cited *Rex v. Inhabitants of St. Petrox, ante, No. 84.* [See also No. 28. and No. 189.]

* V. 43 Eliz
c. 2. §. 5, 9.

THE COURT were of Opinion, as to the 1st Point, That the Binding was *not restrained* to Inhabitants of the same Parish; but might be to a Person residing in *another* Parish. The *Practice* was various, in different Places: But it was said, that where they confined themselves to bind only to Inhabitants of the *same* Parish, it was usual for the Parishioner to whom the Child was bound, to *assign* it immediately to the Inhabitant of *another* Parish. So that no Inconvenience would in Reality, be avoided, by confining it to Inhabitants of the same Parish. And this Consideration induced Lord MANSFIELD and Mr. Justice ASTON to be satisfied that the original Binding might be to the Inhabitant of another Parish.

As to the rest—Whatever Suspicions there might be of *Fraud*, they were *not to suppose Fraud*, they said, where none was found: And here is no Fraud found, or hinted at. The Sessions expressly state “That the Place of the Pauper’s last Settlement is in the Parish of St. Margaret, by Reason of her having served the said Mr. Masters, “with the Consent of Morley, in the said Parish, one “Year and six Months.” And her legal Settlement certainly was, where she served the last forty Days under the Indenture.

BOTH ORDERS AFFIRMED.

Rex *versus* Inhabitants of St. Michael in Bath.

No. 227.

ON *Wednesday* the 27th of *January* 1773, Mr. *Whitchurch* Friday 12th Feb. 1773. moved to quash an Order of Sessions confirming an Order of two Justices, made for the Removal of *Mary Taylor*, with her Daughter *Susannah*, (a Child aged about two Years,) from the Parish of St. Paul in *Bedford* to the Parish of St. Michael in the City of *Bath*.

On *Appeal* to the Sessions, they, upon hearing the Merits, and the Allegations and Proofs on both Sides, confirm the original Order; subject to the Opinion of this Court, on a Case to be specially stated: Which Case is returned as follows—

It appeared to them, upon the Oath of *Mary Taylor*, one of the Paupers, that she was married, about four Years ago, at *Bedford*, to one *Richard Taylor*, then a Corporal in his Majesty’s 63d Regiment

Regiment of Foot. That he staid with her only about three Quarters of a Year, and then left her : And that she has heard her said Husband declare, “ that he was born, about 26 Years ago, “ at *Charlton*, near *Malmesbury* in *Wiltshire* ; and that when he “ was 14 Years of Age, he served an *Apprenticeship* to one *Morley*, a Plaisterer, whose christian Name was *Thomas*, (as far as “ she can recollect,) who lived in the Parish of *St. Michael* in the “ City of *Bath* ; and served the said *Thomas Morley* about four “ Years. That he then ran away, and enlisted for a Soldier ; “ went to *Ireland* ; came from thence to *Bedford* ; and married “ the said *Mary Taylor*, in *St. Paul's Church, Bedford*, as afore- “ said.” And that she does not know what is become of her said Husband ; having never seen or heard of him since.

It further appeared, that the Examination of the said *Richard Taylor* was taken in Writing, shortly after his said Marriage, before two of his Majesty's Justices of the Peace for the Borough of *Bedford*, agreeably to the Mutiny-Act : Which Writing was produced and read before this Court [of Sessions,] and is in the Words following—to wit—“ Town of *Bedford*—to wit—The “ Examination of *Richard Taylor*, a Corporal in the 63d Regiment of Foot ; respecting his last legal Place of Settlement. “ The Examinant *Richard Taylor* upon his Oath saith, He was “ born in the Parish of *Charlton* in the County of *Wilts*. There “ he resided about six Years. From thence, was at School at “ *Marmsbury* in the said County, about four Years. From “ thence, returned home to his Mother's, until he arrived at the “ Age of 14 : From whom he went *Apprentice* to *James Morley*, “ an Ornament-Plaisterer at *St. Michael's* Parish in *Bath* ; with “ whom he lived five Years and half. After which, he enlisted “ into the 63d Regiment ; where he now remains. Taken before us, *John Cave*, one of his Majesty's Justices, this 12th “ Day of *October* 1768 ; *Thomas Boit*. *R. Taylor*, Corp. 63d “ Foot.”

And it further appeared unto this Court, by the Evidence of *Robert Morley*, that there is not, at present, a Person of the Name of *James Morley*, a Plaisterer, in *St. Michael's* Parish in the City of *Bath* : But that one *James Morley*, who was a Plaisterer in the said Parish, died there about eight Years ago. That the said *Robert Morley* and the said *James Morley* were first Cousins. That the said *Robert* worked as Journeyman, in *Bath*, to the said *James*, for about nineteen Years, on and off, till his Death ; but was absent

sent from his Work sometimes for three Quarters of a Year together. That he was perfectly acquainted with the said *James Morley*, and has often heard him say "that he *never would take an Apprentice*; because he was a single Man and only a Lodger "himself." And the said *Robert* says, to the best of his Knowledge, that the said *James Morley never had an Apprentice in his Life*; and that *John Morley*, Brother of the said *James*, who is at present a Plaisterer at *Bath*, never had, to the best of his Knowledge, an Apprentice in his Life; and has, divers Times, given, in the Hearing of the said *Robert*, for Reason, "that being, all "his Life, a single Man and a Lodger, he never would take an "Apprentice."

And there appeared to this Court [the Sessions] *no Evidence* "that the said *Richard Taylor had been bound an Apprentice*," other than is contained in his aforesaid Examination and his aforesaid Declaration given in Evidence to this Court [the Sessions] by his Wife as aforesaid: Neither did it appear to this Court, "that "the said *Richard Taylor* has gained any Settlement in the "said Parish of *St. Michael in Bath*, other than as aforesaid."

Mr *Whitchurch* objected, that nothing is stated, to support a Settlement at *St. Michael's in Bath*: Here is neither Evidence of the Existence of any *Indenture*; nor Evidence of a *Service under any Indenture*. The *Indenture* is the material Thing: The being bound Apprentice *by Indenture* is the essential Point. In Proof whereof he cited the Cases of *Rex v. Inhabitants of Whitechurch Canonorum*, ante, No. 173. and *Rex v. Inhabitants of All Saints in Hereford*, ante, No. 203.

Mr. *Bearcroft* now shewed Cause against quashing these Orders.

There appears enough, upon the Case stated, to satisfy the Court that the Settlement of the Paupers is in *St. Michael's in Bath*. But if the Facts were not fully stated, it would not be a Reason for quashing the Orders: They are not to be quashed, unless they are shewn to be wrong. *An Apprenticeship* is proved: And an Apprenticeship must, by Law, be by *Indenture*. The Master is dead: And the Apprentice, in whose Custody one Part of the *Indentures* must have been, is run away. The 5 *Eliz. c. 4.* shews that there must have been an *Indenture*: But it is not always and absolutely necessary that the *Indenture* should be
I
produced.

produced. Richard Taylor himself has proved it: The Mutiny-Act makes his Examination Evidence at the Sessions.

Mr. *Whitchurch* was now supported by Mr. *Wallace* and Mr. *Mansfield*.

They insisted, that there was no Evidence of a *Binding by Indenture*. The Wife's Evidence, they said, was not admissible: However, that does not prove a Binding by Indenture. And the Soldier's Evidence, even if it had been given at the Sessions, would not have proved it. The Soldier's Examination is only to supply the Want of his Presence at the Sessions: It can't prove more than it would have proved, if it had been given at the Sessions. It is expressly stated, "that *no other* Evidence was given " of *Taylor's having been bound an Apprentice*; neither did it " *otherwise* appear, that he had gained any Settlement in St. " *Michael's*."

But THE COURT thought, they could not draw a Conclusion contrary to the Evidence that had been given; nor could they presume, after four Years, and after the Master was dead, " that there was *no Indenture*."

Mr. Justice ASTON cited a Case of the *King* against the *Inhabitants* of St. *Helen's* in *Abington*, in *Trinity-Term* 1749; where the Indenture of Apprenticeship was not produced in Evidence, nor directly proved to be lost. It was inquired after; and the Son of the Master said, "He could not find it:" but there was not very complete and diligent Search made after it, to find it out; and it appeared pretty plainly, "that it had never been " *stampt*." There, the Orders were quashed, without any Doubt: For, there was not enough stated, to shew it to be a Binding within the Act; and they had not taken sufficient Pains to inquire after the Indenture, and find out whether it was capable of being produced, or not. But in the present Case, the Court will not presume "that the Man served five Years and a " *half without an Indenture*."

Mr. Justice WILLES and Mr. Justice ASHHURST concurred, that the Court were not to *presume* "that there was no " *Indenture*;" especially, after the Death of the Master. The former took Notice, however, at the same Time, that a *Parol-Binding* will not gain a Settlement: It must be a *Binding by Indenture*. For which he cited *Rex v. Inhabitants of Mawnan*.

H. 22^o

H. 22^o G. 2. [See this Case, *ante*, Vol. I. pa. 290. No. 102. and 3 & 4 *W. & M. c.* 11. § 8.]

By the unanimous Opinion of the whole Court,

THE RULE WAS DISCHARGED; and
BOTH ORDERS AFFIRMED.

Note :—The Case of *St. Helen's in Abington*, mentioned by Mr. Justice *ASTON*, is in the first of these Volumes, pa. 290. No. 104. But as I have not there given the State of the Facts, it may not be an improper Supplement both to that Case and the present one, to insert it here.

It was as follows—

Rex versus Inhabitants of *St. Helens in Abington*.

TWO JUSTICES removed *Ann Hutt*, Wife of *Joseph Hutt* gone away, and their four Children (specifying their Names and Ages,) from *St. Saviour's, Southwark*, to *St. Helen's in Abington*. Their Order was confirmed by the Sessions, on an Appeal.

The Case stated upon the Sessions-Order was as follows—

That *Joseph Hutt*, the Husband of *Ann*, and Father of the Children, and who has absconded for six Months last past, was born in 1718, in *St. Thomas's* Parish in the Borough of *Southwark*; and lived, from the Age of five to the Age of 15 Years, with *William Hutt*, Basket-maker, his Grandfather, in the Parish of *St. Helen in Abington*, who maintained and provided for him.

Joan Hudson, the Mother of the said *Joseph Hutt* the Father, gave in Evidence, “ that the said *Joseph Hutt*, her Son, in 1733
“ was bound Apprentice to his Grandfather, by Indenture, for seven
“ Years; and that the said Indenture was delivered into the Custody of the said *William the Grandfather*, as she had been INFORMED by the said *Joseph Hutt* himself: but that she NEVER SAW
“ the Indenture of Apprenticeship, herself; and KNEW nothing of
“ it, but from the INFORMATION of the said *Joseph* her Son.
“ And 'twas reputed in the Family, that the said *Joseph Hutt* was

“ his Apprentice ; and was so described in the Grandfather’s
“ Will.”

And it further appeared upon Evidence, that the said *Joseph Hutt*, the Father, served his said Grandfather five Years in the Parish of *St. Helen* UNDER the said Indenture ; and that the said *William Hutt* the Grandfather found and provided for the said *Joseph Hutt*, during the said five Years, in Cloaths and Necessaries ; and that *William Hutt* the Grandfather died in the Year 1738, leaving *Martha Hutt* his Widow and Executrix, and *John Hutt* his Son ; and that *Thomas Buskin*, by the Order of the Parish of *St. Saviour*, in December 1748, applied to the said *John Hutt* the Son, who then lived with his Mother, at *Abington* aforesaid, in the House where the said *William Hutt* the Grandfather died, and where his Goods and Effects were, to know “ whether
“ he had in his Custody any Indenture of Apprenticeship between
“ the said *William* and *Joseph Hutt*” ; and that the said *John Hutt* told the said *Thomas Buskin* “ that he could not find it ;” and that the said *Thomas Buskin* did NOT inquire “ who was the Executor
“ or Representative of the said *William Hutt* the Grandfather” ; nor did it appear here [at the Sessions] that he made any other Application or Search to discover and find out the said Indenture of Apprenticeship ; nor was any Evidence given “ that the said Indenture of Apprenticeship was lost,” save as aforesaid. And the said Indenture of Apprenticeship was not produced in Evidence.

And it further appeared upon the Evidence of the said *John Hutt*, the Son, who was an Inhabitant and Parishioner of *St. Helen* aforesaid, and rented a House of five Pounds per Year, and who was rated and paid to the Land-Tax there, but was not rated to the Poor, and which Land-Tax was allowed him by his Landlord, “ that he was employed by his Father *William Hutt* to draw
“ an Indenture of Apprenticeship between his said Father and the said
“ *Joseph Hutt* : And that he the said *John Hutt* did, upon a
“ common Sheet of Paper which was NOT STAMPED, copy the
“ Form of an Indenture of Apprenticeship, from an old one, only altering the Names ; and that the said *John Hutt* and one
“ *Green* were Witnesses to the Indenture aforesaid ; but that the
“ said Indenture was NOT stamped.

And it also appeared upon the Evidence of *John Hutt*, “ that
“ the said *Joseph Hutt* the Father, upon the Death of *William
“ Hutt* in 1738, did refuse to serve the said *Martha*, Widow and
“ Executrix

“ Executrix of the said *William Hutt*, as an Apprentice, on Account of the said Paper-Writing NOT being stamped.”

And no other Evidence was given of the said *Joseph Hutt* the Father’s living an Apprentice to the said *William* the Grandfather: Nor was any other Settlement proved to be gained by the said *Joseph Hutt* the Father, than as aforesaid.

Now this Court [of Sessions] being of Opinion, “ that the said *Ann Hutt* and the said four Children are last legally settled in the said Parish of *St. Helen* in *Abington*,” doth therefore order that the Appeal be dismissed, and the original Order confirmed.

Rex versus Inhabitants of Tostock.

No. 228.

ON Wednesday the 3d of this Month, Mr. *Andrew Pemberton* moved to quash an Order of Sessions which confirmed an Order of two Justices made for removing *Edward Parkinson* otherwise *Jerman*, and *Jane* his Wife, from *Isleham* in *Cambridgeshire* to *Tostock* in *Suffolk*. Friday 12th
Feb. 1773.

The Case stated upon the Order of Sessions, was this.

The said *Edward Parkinson*, otherwise *Jerman*, was born at *Tostock* aforesaid, of the Body of one *Elizabeth Parkinson*, Spinster, a legal Inhabitant of the said Parish of *Tostock*. EDWARD JERMAN, an Inhabitant of the Parish of *Isleham*, but then residing in *Tostock*, was the putative Father of the said *Edward Parkinson* otherwise *Jerman*. Soon after the Birth of the said *Edward Parkinson*, otherwise *Jerman*, the said *Elizabeth Parkinson*, at the Parish of *Tostock* aforesaid, was married to the said *Edward Jerman*: And some short Time after the said Marriage, the Parish-Officers of *Tostock* desired the said *Edward Jerman* to get a Certificate from the said Parish of *Isleham*. Whereupon, the said *Edward Jerman* applied to the Parish-Officers of *Isleham* aforesaid, for such CERTIFICATE for himself and his said Wife, and for the said *Edward Parkinson* otherwise *Jerman* (the Pauper) his Son; WITHOUT informing them “ that the said *Edward Parkinson* otherwise *Jerman* was born a Bastard.” The said Parish-Officers knew nothing thereof, but from such Information of the said *Edward Jerman*. By a Certificate bearing Date the 15th of November 1746, the Parish-Officers of *Isleham* did acknowledge, the said Ed-

Edward Jerman and *Elizabeth* his Wife, and *Edward* the Pauper, by the Name and Description of "*Edward Jerman and Elizabeth* " his Wife and *Edward* THEIR SON," were Inhabitants of the said Parish of *Isleham*.

Whereupon, the Court [of Sessions] is of Opinion " That the " said *Edward Parkinson* otherwise *Jerman* did not gain any Settlement for himself or for the said *Jane* his Wife in the said " Parish of *Isleham* aforesaid, by Reason of any of the Facts " stated"; and doth therefore confirm the Order of the said two Justices for the Removal of the said *Edward Parkinson* otherwise *Jerman*, and *Jane* his Wife, from the said Parish of *Isleham* to the said Parish of *Tostock*.

Mr. *Pemberton* argued that the Sessions were mistaken in their Opinion: For, the Parish of *Isleham* were bound by their Certificate, which expressly acknowledged the Pauper *Edward* to be an Inhabitant of their Parish. And he cited the Case of the King against the Inhabitants of *Headcorn*, (*Mary Broomball's Case*), Trin. 19^o G. 2. (*ante*, p. 253. No. 86.) as a strong Proof on his Side.

Mr. *Mansfield* now shewed Cause against quashing these Orders.

This Bastard, he said, was *actually settled* at *Tostock*, upon his Birth, prior to the Date of the Certificate. He did not go from *Isleham* thither, under the Certificate. This Case is *not within the Intention* of the Certificate-Acts. The Pauper did not come into *Tostock*, to inhabit there: He was in it, *before*. He never was in *Isleham*, nor out of *Tostock*.

Besides, this Certificate was obtained from *Isleham* by a Suppression of Truth: The Father of this Bastard represented him to the Officers of *Isleham*, as his legitimate Son. It is a *Fraud*, upon the Face of the Order.

In the Case of *Headcorn*, and in the Cases which were there cited, the Parishes who gave the Certificates were bound to receive the Paupers, because it was their own Fault or Folly, that they were deceived: Whereas, here, the Father told them a Falsehood, and they had no Means of knowing the Truth.

BUT THE COURT held the Parish of *Isleham* to be bound by their Certificate, which expressly acknowledged "*Edward Jerman and Elizabeth* his Wife, and *Edward* their Son, to be " Inhabitants

"Inhabitants of their Parish." And as to *Fraud*, it was neither stated to be a Fraud; nor that the Parish of *Tostock* desired the Father to procure a Certificate for the Bastard, AS FOR *his legitimate Son*: It is only stated "that the Parish-Officers of *Tostock* desired the said *Edward Jerman* to get a Certificate from *Ijleham*."

Mr. *Mansfield* thereupon desired that it might go down again, to be re-stated.

Mr. *Pemberton* answered, That at the Sessions, the stated Case was read over to the Justices; and that the Word "*Fraud*" was originally inserted in it, but was there struck out.

PER CUR. unanimously,

RULE made ABSOLUTE; and
BOTH ORDERS QUASHED.

Easter Term

13 Geo. 3. 1773.

No. 229.

Rex *versus* Inhabitants of Richmond.

Wednesday
28th April
1773.

ON Saturday 21st November 1772, Mr. Bearcroft moved to quash an Order of Sessions confirming an Order of two Justices made for removing *Ann Springall* the Wife of *William Springall* (gone from her,) with *Thomas* their Child (aged ten Months) from *St. Margaret's Westminster* to *Richmond in Surrey*.

The Facts stated upon the Order of Sessions were these—

William Springall, being a single Man, was hired by the Year to *Alexander Crawford, Esq;* of *Richmond*, on the *thirtieth of October* 1769; and on the 4th of *September* 1770, married a Fellow-Servant. The Wife had given a Month's Warning, in *August* preceding, "to quit the Service;" and was to quit it in *September*, in Consequence of such Warning; but was desired by her Master, "to stay till the *seventeenth of October*"; which she did: And then the Master said to *Springall* (the Husband) "that he supposed, as his Wife was going away, he (the Husband) would like to so too." The Husband replied, "He would like it better, if it was agreeable to his Master". His Master said "He had no Objection, as he had another Footman coming; and would pay him his *whole Year's Wages*:" Which he accordingly did, on the said *seventeenth*, in full to the *thirtieth*. On which said *seventeenth of October*, both the Husband and Wife left the Service: And the new Footman came in the Husband's Place, on the said

said 17th of *October* at Night, under the abovementioned Circumstances. The Sessions, upon Consideration of the Premises, confirm the original Order of the two Justices.

Mr. *Bearcroft*'s Objection to these Orders was, "that *William Springall* did not gain a Settlement by *serving for a Year* in *Richmond*; because he *left* the Service *thirteen Days* before the *Expiration* of his Year." The Act of Parliament of 8 & 9 *W. 3. c. 30. §. 4.* is express "That no such Person so hired as *aforesaid* shall be adjudged or deemed to have a good Settlement in any such Parish or Township, UNLESS such Person shall *continue and abide* in the same Service during the Space of *one whole Year*."

Mr. *Lucas* now shewed Cause against quashing these Orders.

This is a fair and honest Service for a Year, within the *Spirit* of the Law and of this very Act of Parliament; which was only made to prevent Servants from gaining Settlements by being merely *hired* for a Year, and yet quitting their *Service* whenever they pleased. But the Master may still dispense with Part of the Service, either at the Beginning, in the Middle, or at the End of the Year: And at the End, of the Year, the Service may be dispensed with, even without the Master's Consent, if there be a reasonable Cause for not completely finishing it. The Court have been very liberal in Favour of Settlements, where there has been a reasonable Ground, and no Fraud. The present Case is a *Leave of Absence* for a few Days at the End of the Year, voluntarily given by the Master; first proposed by the Master to the Servant, not applied for by him; and the whole Year's Wages offered by the Master, and willingly paid by him.

Mr. *Lucas* cited many Cases, in Support of his Argument; namely, *Rex v. Inhabitants of Islip*. [*v. ante*, pa. 48 & 71.] *Rex v. Inhabitants of Goodnestone*. [*v. ante*, No. 85.] *Rex v. Inhabitants of Christchurch*. [*v. ante*, p. 494. No. 158.] *Rex v. Inhabitants of Frome, Selwood*. [*v. ante*, pa. 565. No. 181.] *Rex v. Inhabitants of Madington*. [*v. ante*, pa. 675. No. 211.] *Rex v. Inhabitants of Bray*. [*v. ante*, pa. 682. No. 214.] *Rex v. Inhabitants of Potters Heigham*. [*v. ante*, pa. 690. No. 296.]

Mr. *Bearcroft* insisted upon the plain express Words of the Act of Parliament: The imagined Spirit of it, he said, was a vague Rule of construing it. Mr. *Lucas*'s Cases, he said, were not directly in Point. As to those where the Absence was in the *Middle* of the Year, such Absence is purged by the Master's taking
the

the Servant again. And many of his other Cases turned upon particular Circumstances. That of *Islip* was an unreasonable Denial by the Master : And the Contract was not dissolved. [*v. ante*, p. 71.] In that of *Goodnestone*, the Servant hired a Man to do his Work : And the Contract was not dissolved. [*v. ante*, 252, 253.] In the Case of *Christchurch*, the Servant's Inability arose from Illness : It was not reasonable, that the Visitation of God should prevent her gaining a Settlement. [*v. ante*, pa. 497.] The Case of *Frome Selwood* was determined upon the Fraud : The Servant's Request "to go and visit his Relations" was a reasonable one. [*v. ante*, pa. 565, 566.] In the Case of *Madington*, the Kick of the Horse, like Sicknefs, was the Visitation of God : And the Servant's going Home "to get it cured" was grounded upon a reasonable Cause. [*v. ante*, pa. 677.] The Case of *Bray* was but a single Day : And that Case and the Case of *Potters Heigham* stand upon their own Circumstances ; and the Contract was not dissolved. But here, the Contract was dissolved : And the paying the whole Year's Wages can't alter that Fact.

Mr. *Bearcroft* cited three Cases ; *Rex v. Inhabitants of Preston*, from 1 *Barnardiston* 415. *Seaford* and *Castlechurch*, from 2 *Str.* 1022. and *Pawlett* and *Burnham*, from *Foley* 206. That of *Seaford* is very shortly reported by Sir *John Strange* : It may be seen at large, in the 1st Volume of this Collection, p. 68. No. 20. It was a Removal of the Pauper from *Syford* in *Staffordshire* (not *Seaford*) to *Castlechurch*. The other two Cases, of *Pawlett* and *Burnham*, and *Preston* and *Ampney*, were there cited. [*v. ante*, pa. 69.] and also another, from *Godalming*. In all these Cases, the Services short of a Year were holden *not* to gain a Settlement.

LORD MANSFIELD—There's no Necessity of an actual Service upon every Day of the Year. The Master can always dispense with it : He can give *Leave of Absence*. Nay, if the Servant is absent *without* Leave, in the middle Part of his Year, such Absence may be *purged*, as it has been termed, by the Master receiving him again : that is, the subsequent Consent of the Master ratifies the Act done, and is given with a *Retrospect*.

I am clearly of Opinion, that the Servant has in the present Case sufficiently served his whole Year. The Master voluntarily gave him *Leave of Absence* for the last thirteen Days ; and, of his own Accord, paid him the whole Year's Wages. I think, the Justices have determined rightly, upon both the Orders.

Mr.

Mr. Justice ASTON concurred in the same Opinion, for the same Reasons. And he added, that there is no Difference between the *End* and the *Middle* of a Year; where the Master only gives Leave of Absence, which is not stipulated for in the original Contract. Indeed, where the Absence is *stipulated for* in the original Contract, and made *Part of the original Contract*, as an *Exception out of the Service*; the Case is then of a different Kind: As in the Case of the King against the Inhabitants of *Hatfield* (*ante*, pa. 439. No. 141.) where a Hiring for one Year, to wit from *Michaelmas* to *Michaelmas*, "with *Liberty* to let himself for the " *Harvest-Month*, to any other Person," was determined "not to " be a Hiring for a Year." A Part of the Year was there *excepted out of* the original Contract: It was therefore only a Hiring for the *other eleven Months*. If the Servant goes away in the Middle of the Year, and returns again, and the Master receives him again; the Master's taking him again *purges* (as it is called) the Absence, though the Servant had not his previous Leave for it; and shews the Master's *Consent* to it, though given subsequently. Here, the *whole Year's Wages* were voluntarily paid by the Master, quite up to the End of the Year: Which confirms the Master's Acquiescence and Approbation.

Mr. Justice WILLES was not in Court.

Mr. Justice ASHHURST concurred in Opinion with Lord MANSFIELD and Mr. Justice ASTON; and particularly repeated "that the Master's offering and paying the whole Year's Wages, " in the Manner stated upon the Order of Sessions, was a Proof " of his Consent."

BOTH ORDERS AFFIRMED.

Vide ante, pa. 463, 464. No. 147. *Rex v. Inhabitants of Caverswall*; and pa. 479. to 481. No. 152. *Rex v. Inhabitants of Nether Heyford*; in both which Cases, this Point is well discussed and settled. See them abstracted, at the End of the 2d Volume of this Collection, under the respective Numbers 147. and 152: Where I have expressed the Distinctions there taken, as concisely and clearly as I was able.

No. 230.

Rex *vers.* Inhabitants of Donington.Friday 30th
April 1773.

ON Friday 12th February 1773, Mr. Serjeant *Hill* moved to quash an Order of two Justices made for removing *Thomas Saunderson* and *Hannab* his Wife, from *Wyberton* in the Parts of *Holland* in the County of *Lincoln*, to *Donington* in the same County; and also the Order of Sessions confirming it.

The Case stated upon the Sessions-Order was as follows.

That the said *Thomas Saunderson* was legally settled in *Donington*, by Service, prior to the Year 1754. He then hired a House and three Acres and two Roods of Land, at the yearly Rent of nine Pounds; which he occupied and paid Rent for, several Years, from *Lady-Day* to *Lady Day*. In the Beginning of September 1756, he the said *Thomas Saunderson* married *Jane* the Widow of *Daniel Wheldale* of the Parish of *Wyberton* aforesaid, who resided in a Cottage in the said Parish of *Wyberton*, purchased by the said *Daniel Wheldale* for five Pounds, and which said Cottage MIGHT be of the Value of one Pound ten Shillings per Annum: And about a Fortnight after his said Marriage, he the said Pauper *Thomas Saunderson* went and resided with his Wife in the said Cottage in *Wyberton* aforesaid; and kept the Key of the House in *Donington*, till *Lady-Day* following. But it not appearing to the said Court [of Sessions] that the said *Thomas Saunderson* ever had Credit for ten Pounds per Annum; as at the Time he left the Parish of *Donington*, viz. in the Month of September, all his Effects were sold by his Landlord in *Donington*; and it appearing, by an Acquittance produced in Court, "that he at the same Time satisfied his Landlord for the Rent that was to become due at *Lady-Day* following;" [which Receipt was the only Proof of his keeping Possession of any Part of the Premises in *Donington* till *Lady-Day* following;] as he never resided in the said Parish of *Donington* after he first left it in September as aforesaid, nor ever kept any Stock or Effects on the Premises whatever, as the Land belonging to the said House was half-year Land, and common to the Inhabitants of *Donington* aforesaid from *Michaelmas* to *Lady-Day*, except about two Roods which the Landlord took Possession of at *Michaelmas*, and abated ten Shillings in the Rent for the same;

And it not appearing to the said Court [of Sessions] that his said Wife *Jane* (Relict of the said *Daniel Wheldale*) had ever administered to her said Husband *Daniel Wheldale*, or had any Right to the said Premises in *Wyberton*; not having been admitted Tenant, nor ever paid any Rent for the same;

The

The Order of Sessions, (after stating that the above Facts appeared to them,) concludes thus—"It is *not* thought that the said *Thomas Saunderson*, the Pauper, can gain any Benefit by the " *wrongful Possession of the said Cottage in Wyberton*; he appearing " to be *only a casual Occupant* therein."

Mr. Serjeant *Hill* obtained a Rule to shew Cause why both these Orders should not be quashed.

Which Rule was now made absolute, upon his Motion, on an Affidavit of Service, and *without Defence*.

N. B. The only Reason of my mentioning this Case is, that it may be *known* that it passed *sub silentio*.

Rex versus Inhabitants of Burgh in the Marsh.

No. 231.

FOR the *same Reason*, it may not be amiss to notify, that these Orders were given up as indefensible, after an unsuccessful Attempt at having the Sessions-Order sent back to be re-stated.

The Sessions had confirmed an Order of two Justices made for removing *Frances Boyington* and her four Sons from *Reavesby* in the Parts of *Lindsey in Lincolnshire* to *Burgh in the Marsh* in the same Parts. Mr. *Baldwin* had moved to quash both Orders; and had a Rule to shew Cause. Mr. Serjeant *Hill* had obtained a Rule to shew Cause why the Order of Sessions should not be sent back to be re-stated; upon a Suggestion "that the State then returned " up was contrary to the Facts." The Serjeant's Rule was discharged by Mr. *Mansfield*, on the last Day of last Term. Whereupon, the Orders were given up, as not being defensible on the Case stated upon the Return to the *Certiorari*.

Trinity Term

13 Geo. 3. 1773.

No. 232.

Rex *vers.* Inhabitants of Over.

Monday 14th
June 1773.

ON the last Day of last Term, Mr. Thomas Cowper, junior, moved to quash an Order of Sessions which confirmed an Order of two Justices, made for removing the reverend John Langhorn from *Helsington* in the County of *Westmoreland* to *Over* in the County of *Chester*.

The Sessions stated a special Case: And the following was the State of the Facts, upon the Order of Sessions—

That on the first Day of *October* 1766, the Vicarage of the Parish of *Over* aforesaid was sequestered for three Years, OR till the Bishop should release the same.

That on the 12th Day of *October* aforesaid, the Pauper was ordained *Deacon*, by the Bishop of *Chester*, in order to supply the Cure of *Over* during the Sequestration.

That from the 15th Day of *October* aforesaid to the 15th Day of *June* 1768, he performed divine Service as Curate, and resided in the Parish of *Acton*, by Exchange with Mr. *Meyrick* who was the Curate of *Acton* aforesaid, and who during that Time performed divine Service at *Over*, and paid the Pauper five Pounds a Year, for doing his Duty at *Acton*, in Addition to his Salary of 35*l.* a Year, which was paid him by the Churchwardens who were the Sequestrators of *Over*, from the said 15th Day of *October* 1766, to the 1st Day of *October* 1769, when the Sequestration ended.

which holds not by the year but till his death or removal,
which excludes the idea of its being an annual office.
Curacy is temporary or ~~yearly~~ occasional, the curate
not for himself ^{on} his own account, but for the rector
whereof he is a vicar. Nor, with respect to such
offices of this latter kind, are they in their nature
annual, though it is possible, that under special contracts
they may be sometimes for a year certain. Besides I doubt,
whether the situation of an occasional or temporary
curate can be properly deemed a parochial office, which
I understand the two statutes of William is the only
of office to which they are applicable. Indeed
at Mansfield, in the case ^{of the King against the inhabitants of Over} in Burr. Settlement. Cas. 746,
to consider such temporary & occasional curacies
not falling within the ^{statute} description of
vicar in any sense; ~~of a vicar~~ far from clear, that
even the spiritual office of a rector or vicar
which his Lordship might mean ^{either that or a} such
curacies were not offices, or that ^{more by} spiritual offices
were not offices as the statutes of William
on the whole therefore, whether the curacy in the case
mentioned ^{is} by Lord Lyberty is ~~perpetual~~ or
whether it is only occasional, are equally of opinion, ^{that it will not be settled} by a legal settlement. 11. Dec. 1791.

It is not stated what ~~it~~ is the nature of the curacy, ^{the} under which the title to a settlement is claimed. But I cannot ~~the~~ ^{and} imagine any species of curacy, which ought to be ~~a~~ - med either a public annual office or charge within the statute of the

There are two statutes material to be considered. in the 3.^d of William 3. chap. 11. sect. 6. according to which any person, who shall ~~reside to inhabit in any town or parish~~ ^{reside} for himself & on his own account execute any public annual office or charge in ~~any~~ any town or parish during one whole year, ~~or shall be charged~~ ^{shall} is to be deemed to have a legal settlement in such town or parish. What is particular, D.^r Burnet ~~omits~~ when he is writing upon settlement by service, omits to take notice of this provision. The other statute is the 9.th & 10.th of William chap. 1. ^{by} which ^{some} executing ^{an} annual office in any parish ^{if the person is} being placed in such office, is explained to be a title to ~~a person~~ a settlement to one coming into the parish with a certificate. But I conceive, that no species of ^{annual} curacy can be ~~ought~~ ^{ought} to be ~~deem~~ ^{considered} as an office within either of these statutes. ^{At the curacy} ~~Neither~~ perpetual, ~~nor~~ ^{it's} being a ~~permanency~~ ^{continuance} till the

That from the said 15th of *June* 1768, to the said first Day of *October* 1769, the Pauper performed divine Service and did the Duty as Curate at *Over*, and resided there.

But it did not appear, that the Pauper had any LICENCE to the Curacy of *Acton* aforesaid.

The Court [of Sessions] being of Opinion "that the said *John Langhorn* gained a Settlement at the Parish of *Over* aforesaid "in the County of *Chester* aforesaid," do order that the said Warrant of Removal be confirmed and made absolute: And the same is hereby confirmed and made absolute accordingly; subject nevertheless to the Opinion of the Court of King's Bench, on the aforesaid State of the Case.

The only Question, he said, was "Whether serving a Cure in "a Parish, as SEQUESTRATOR, gains a Settlement:" Which the Justices had determined in the Affirmative; and he denied.

Mr. *Chambre* now shewed Cause. He argued, 1st, That this Curate or Sequestrator, was irremovable, and not within the Intention of 13 & 14 C. 2. c. 12. He did not come as a *Wanderer*: He rather came to settle on his own. They could not have removed him within the first forty Days. And a Person not removeable within forty Days, gains a Settlement by residing forty Days. Besides, 2dly, This Office of Curate or Sequestrator "for "three Years, or till the Bishop should release the Vicarage from "the Sequestration," is a public annual Office or Charge in the Parish, within 3 & 4 W. & M. c. 11. § 6. and it was executed on his own Account. It was conferred upon him, under his own Qualification of a Deacon; and quite independent of the Vicar of *Over*. A Deacon is for Life: And it is called an Office, in the Canons. And it's being conditional, if the Bishop should release the Sequestration, is no Objection: A conditional Hiring will gain a Settlement.

He cited *Linwood* 310. and what was said by Lord *Hardwicke* in the Case of *Sundriss*, (*ante*, Vol. 1. pa. 9.)

Mr. *Cowper*, contra, argued, 1st, That 13 & 14 C. 2. c. 12. was laid entirely out of the Case, by several subsequent Statutes: And he could not gain a Settlement under that Act. 2dly, This cannot be considered as executing an annual Office or Charge in the Parish, on his own Account. It could not be annual; because the Sequestration would be at an End, the very Moment the Debt had been paid. The Curate also might have dissolved the Contract, whenever he pleased. He had no Freehold in his Office, as a Parish-

a Parish-Clerk has: Who is, upon that Foot indeed, holden to be irremovable, and to gain a Settlement. And as to his being a Deacon; that is a *Character*, not an Office.

LORD MANSFIELD—There is no Colour for considering this as an *annual* Office: It is *no Office* at all.

Mr. Justice ASTON—You can't call it an *annual* Office, when the Sequestration may be determined at *any* Time. It is not the annual Office of a *Constable*, or a *Titthingman*: They are appointed yearly, and to serve for the Year. That of *Parish-Clerk* is a *Freehold*: And it is upon *that* Foot, that a Parish-Clerk gains a Settlement.

Mr. Justice WILLES and Mr. Justice ASHHURST concurred.

BOTH ORDERS QUASHED.

No. 233.

Rex *versus* Inhabitants of Framlingham.

Wednesday
30th June
1773.

ON Friday the 18th of this same Month, Mr. *Dunning* moved to quash an Order of Sessions, which confirmed an Order of two Justices made for removing the Paupers from *Martlesham* in *Suffolk* to *Framlingham* in the same County.

The Order of Sessions, after reciting an Appeal against an Order of two Justices for removing *Simon Churchyard*, Cordwainer, and *Elizabeth* his Wife; *Rebecca Churchyard*, Spinster, aged 18 Years or thereabouts; *William Churchyard*, aged 15 Years or thereabouts; and *Elizabeth Churchyard*, aged 6 Years or thereabouts; from the Parish of *Martlesham* in *Suffolk* to the Parish of *Framlingham* in the same County; states, that it appeared to them, That the said *Simon Churchyard* and *Elizabeth* his Wife, having a legal Settlement in *Framlingham*, obtained a *Certificate* for themselves and for the said *Rebecca* and *Mary* the then Children of the said *Simon Churchyard*, bearing Date on 3d June 1757; and by Virtue thereof went to reside in *Martlesham*, and there had the said *William* and *Elizabeth* their Children. That the said *Simon Churchyard* resided in *Martlesham* for some Years, under the said *Certificate*; and on or about 29th July 176-, did verbally contract and agree with one *Stephen Hayle* of *Martlesham* Farmer, to hire of him the said *Stephen Hayle* a public House called the

the *Lamb*, at *Martlesham* aforesaid, with an Orchard, Yard, Stable, and one half of the Apples growing in the said Orchard (being Part of the Farm in the Occupation of the said *Stephen Hayle*), at and under the yearly Rent of ten Pounds, payable half-yearly: And it was at the same Time agreed, that all *Parish-Rates and Charges* with which the said Premises should become chargeable, should be paid by the said *Stephen Hayle*, and not by the said *Simon Churchyard* the Tenant. That soon after, the said *Stephen Hayle* drew up an Agreement in Writing, with Respect to the above Hiring, in the Words following, viz. “ 29th July 1765. Then
“ leat to Mr. *Simon Churchyard*, the *Lam* in *Martlesham*, Orchard
“ and Yards on the lower Part of the Hows, and the Stall that
“ belong to the Cartlody; the one half of the Apples to be the
“ Property of the said *Stephen Hayle*, and the other Part the Pro-
“ perty of the said *Simon Churchyard*. The Rent is ten Pounds
“ per Year, of lawful Money of *Grate Briten*; and to pay the
“ Rent half-yearly, that is to say, at old *Lady* and old *Michel-*
“ *mes* Day. ’Tis agreed, that if in Case *Simon Churchyard* give
“ Warning at a *Lady*, to leave the Primecies the *Michelmes* fol-
“ lowing; and likewise if *Stephen Hayle* give Warning at a *Lady*,
“ to quit the Primeces the *Michelmes* following; the said *Stephen*
“ *Hayle* do agree to the abovementioned Words. As Witness my
“ Hand: *Stephen Hayle*” — And brought the same to the said
Simon Churchyard, to be signed. To which the said *Simon*
Churchyard objected, on Account of no Mention being made in
such written Agreement, with Respect to his being exonerated from
the Payment of Rates: To which, the said *Stephen Hayle* replied
“ that it was an Omission through Forgetfulness; but that he
“ meant the Contract should be UNDERSTOOD in that Manner.”
Which Agreement appeared to the Court to be signed by the said
Stephen Hayle only: But the said *Stephen Hayle*, on his Examination upon Oath, declared “ that he believed the said *Simon Church-*
“ *yard* signed a Counterpart thereof; but could not find the same,
“ but had seen it about two or three Years since, according to
“ the best of his Remembrance and Belief.” And that the said
Simon Churchyard entered on the said Premises at *Michaelmas-Day*
following, and held the same for four Years then next fol-
lowing, and paid the said *Stephen Hayle* the yearly Rent of
ten Pounds for each of the said Years. And it further appeared
upon the Examination of the said *Stephen Hayle* upon Oath, and
also of the said *Simon Churchyard*, that the said *Simon Churchyard*
did

did NOT pay ANY *Parish-Rates* for the said Premises; but that ALL the *Parish-Rates* were paid by him the said *Stephen Hayle*, for the whole Time that the said *Simon Churchyard* occupied the said Premises, pursuant to his the said *Stephen Hayle's* Undertaking and Agreement with the said *Simon Churchyard* at the Time the said *Simon Churchyard* first contracted for the said Premises. And it further appeared on the respective Examinations of the said *Stephen Hayle* and *Simon Churchyard* upon Oath, that in Case the said *Simon Churchyard* had paid the *Parish-Rates* aforesaid, the said *Stephen Hayle* would not have expected to be paid, nor would the said *Simon Churchyard* have consented to pay the said yearly Rent of ten Pounds for the said Premises. And it further appeared to this Court, that the said *Simon Churchyard* and *Elizabeth* his Wife, *William Churchyard* and *Elizabeth Churchyard* their Children, or any or either of them, did never ask Relief or ever become chargeable to the said Parish of *Martlesham*: But that the said *Rebecca Churchyard*, on the 14th Day of *December* last past, (at which Time she resided with the said *Simon Churchyard*, her Father, in *Martlesham* aforesaid, as Part of his Family,) by Reason of her being then big with Child, (of which she has since been delivered, and is born a Bastard,) applied to the *Parish-Officers* of *Martlesham* aforesaid, for Relief, (her Father not being able, in Point of Circumstances, to assist her.) Accordingly, the said *Rebecca Churchyard* did ask Relief, by asking the same of one of the said *Parish-Officers* of *Martlesham*; who gave her two Shillings. And that immediately after such Relief was given by the said *Parish-Officer* of *Martlesham* to the said *Rebecca Churchyard*, the said Order of Removal was obtained.

Whereupon, this Court [the Sessions] is of Opinion, upon the Facts only above stated, "That such Hiring and Occupation was
 " EVASIVE, and not a *bonâ fide* Hiring of ten Pounds a Year, so as
 " to intitle a Certificate-Person to a Settlement, and therefore that
 " NONE of the said Paupers gained any Settlement in the said Parish of *Martlesham*;" and doth therefore confirm the said Order of the said two Justices for the Removal of *Simon Churchyard* and *Elizabeth* his Wife, *Rebecca Churchyard*, *William Churchyard*, and *Elizabeth Churchyard*, the Children, from the said Parish of *Martlesham* to the said Parish of *Framlingham*.

Mr. *Dunning* made two Objections to the Determination of the Justices. First—This Certificate-man gained a Settlement in *Martlesham*, by really and *bonâ fide* taking a Lease of a Tenement
 of

of the *yearly Value of ten Pounds*, within 9 & 10 W. 3. c. 11. Secondly—But if it were to be admitted that he did not thereby gain a Settlement in *Martlesham*, but remained still a Parishioner of *Framlingham*, under the Certificate; yet none of his Family ought to have been sent back to *Framlingham*, but the *Person who asked Relief of Martlesham*: The Justices could not remove the *whole Family*, nor any more of them than *asked Relief*; which was *Rebecca only*.

Mr. *Wallace* now shewed Cause against quashing these Orders. First—This is *not a real and bonâ fide* Taking a Lease of a Tenement of the yearly Value of *ten Pounds*. It is as much *less* than ten Pounds a Year, as the Parish-Rates and Charges amount to. This is an *evasive* Taking, so far as it relates to gaining a Settlement. Secondly—By the 8 & 9 W. 3. c. 30. the Parish who gives the Certificate is obliged to receive and provide for the Person mentioned in it, together with his or her Family, “whenever
“ *he, she, or they* shall happen to become chargeable to, or be
“ forced to ask Relief of the Parish Township or Place to which
“ such Certificate was given.” It is not necessary that *all* of them should ask Relief: If Relief is asked by *any one* of the Family, the *whole* Family may be removed. *Rebecca* was a Part of this Man’s Family; and he was not able to maintain her: Therefore she asked Relief of the Parish. Consequently, the Certificate-Man’s Family being become actually chargeable, the Justices were authorized to remove them All back to the Parish which gave the Certificate.

Mr. *Dunning, contra*, argued, 1st, That the Act of 9 & 10 W. 3. c. 11. does not mean that the Person must take a Tenement of ten Pounds *per Annum* net Money, over and above the Taxes. In some Places, the Landlord pays all the Taxes: In other Places, Part of them. Forty Shillings a Year qualifies a Freeholder to vote, though he pays the Land-Tax out of it. The Qualification of a Justice of Peace, in like Manner, includes his Land-Tax. This Man had Credit for ten Pounds a Year: And that is the Criterion meant by the Act of Parliament. 2dly, The *Father* never asked Relief for himself or for any of his Family; not even for this Daughter. She was manifestly a grown Person; and asked Relief for herself, and for no one else. These several Persons are independent, each on the other: And that *one* only, who asked Relief, ought to be removed. Yet the Justices have made the same Adjudication with Respect to *all* of them, namely,

“ that *they* are become actually chargeable” ; and have removed them *all* : Which Conclusion, made by the Justices, is not warranted by the Premises.

LORD MANSFIELD was gone.

THE REST OF THE COURT agreed that upon the *first* Objection, the Orders ought to be quashed. For, they were of Opinion “ that this was a *good* Taking a Lease of a Tenement of the “ yearly Value of ten Pounds,” within the Intention and Meaning of the Act of Parliament. It turns upon the *Credit* given to the Certificate-Person. Now here, Credit is given to this Man, for 10 *l.* a Year. He contracted for it at that Rent : And he paid that Rent to his Landlord for it. It was a *real and bonâ fide* Taking a Tenement of that yearly Value.

This Opinion upon the first Point rendered it unnecessary to enter into a formal Discussion of the second : But

Mr. Justice ASTON inclined to be of Opinion “ that if “ several Persons reside in a Parish under the same Certificate, the “ asking Relief by a *single one* of them would *not* render the rest “ removeable.” The Certificate-Act, 8 & 9 *W. 3. c. 30. § 1.* says “ that the Parish who gives the Certificate shall receive and “ provide for the Person mentioned in it, together with his Family, whenever he she or they shall happen to become chargeable, or ask Relief : And *then*, and *not before*, it shall be lawful “ for any such Person, and his or her Children, to be removed to “ the Parish from whence such Certificate was brought.” And it must be *adjudged* by the Justices, “ that such Person is *actually* “ become chargeable,” before they can legally make an Order of Removal. Now how can the Justices be authorized to make such an Adjudication upon a Person who in Fact is *not* become chargeable, *nor ever has asked Relief* ?

PER CUR.—Rule made absolute.

BOTH ORDERS QUASHED.

Michaelmas

Michaelmas Term

14 Geo. 3. 1773.

Rex *versus* Inhabitants of Westerleigh.

No. 234.

TWO Justices removed *William Ayliff*, *Mary* his Wife, and their four Children, (specifying their Names and Ages,) from *Old Sodbury* in the County of *Gloucester* to *Westerleigh* in the same County: And, on Appeal, the Sessions confirmed their Order; stating the following Facts, *viz.*

Saturday 27th
Nov. 1773.

That the said *William Ayliff* was hired for a Year and served for a Year with and to *Isaac Highmore* of and in the said Parish of *Westerleigh*; and was, after the Expiration of that Year, entered and sworn to serve as a Substitute in the *Gloucestershire Militia* for three Years.

That about a Year and an half after he was so entered and sworn, he was hired for a Year to *Anne Tyler* of the Parish of *Old Sodbury* aforesaid, to serve her for a Year: But at the Time of his being so to her hired, he told her "that he was in the *Militia*, and he "MIGHT BE ABOUT A MONTH IN THE YEAR to attend in that "Duty;" and at the same Time told her "that he would pay a "Man to serve in his Place, or else would make her an Allowance "out of his Wages for the Time he was absent."

That he entered on his said Service with the said *Anne Tyler*, and served her till the Month of *May* following; and then joined and attended the *Militia* for thirty Days; and afterwards returned to the said Service of the said *Anne Tyler*, and continued therein until the End of his said Year, and then made her an Abatement

of eight Shillings out of his Wages for the Time he was absent out of her Service.

On *Wednesday* 10th *November* 1773, Mr. C. T. Morgan moved for and obtained a Rule to shew Cause why these Orders should not be quashed.

The Justices, he said, had mistaken the Law, in supposing *Ayliff's* last legal Settlement to be at *Westerleigh*: For that he had gained a subsequent Settlement at *Old Sodbury*, by being hired for a Year and serving for a Year to Mrs. Tyler, of this latter Parish.

Mr. *Bearcroft* and Mr. *Selwyn* now shewed Cause against quashing these Orders. They argued that this Man gained no Settlement at all in *Old Sodbury*: For that here was no Hiring for a Year. It is true, indeed, that the Words are—"to serve her for a Year." But a Hiring for a Year, with Liberty to be absent for a Month, is really only a Hiring for eleven Months: And when a Part of the Year is *excepted out of the original Contract*, no Settlement can be gained. Now, here, it was stipulated *at the Time of the Hiring*; it was Part of the *original Contract*; "that he might be absent about a Month in the Year." In Support whereof, they cited the Case of *Bishop's Hatfield* (reported *ante*, Vol. 2. pa. 439. No. 141. and mentioned and affirmed by Mr. Justice *ASTON*, *ante*, No. 229.) where Liberty to let himself to any other Person during the Harvest-Month, was holden to make it no Hiring for a Year. They added, that, by the Militia-Act, the Man was *not sui juris*: He was entered and sworn "to serve in the Militia for three Years;" and was liable to be called out to Service, at *any Time* of the Year. Therefore they prayed to have the Orders affirmed.

Mr. *Dunning* and Mr. *Morgan*, *contra*, argued that this was a good Hiring for a Year; and that the Pauper was *sui juris* to hire himself out for a Year. It is positively stated "that he was hired to *Anne Tyler* for a Year, to serve her for a Year." And what follows is not repugnant to this positive State of that Fact: It amounts only to an Agreement to dispense with his *personal* Service for about a Month, upon the Terms he proposed (of hiring a Substitute, or making a proportionable Allowance,) *in case* such an Event should happen. The Case of *Bishop's Hatfield* was a Hiring from *Michaelmas* to *Michaelmas*, with Liberty "to let himself for the Harvest-Month, to any other Person": Which was, undoubtedly, only a Hiring for eleven Months; and *no Relation* at all

all subsisted between the Master and Servant, during the Harvest-Month. Whereas, here it was *contingent*; and the Man was to serve the whole Year, if the Contingency did not happen: And he actually did serve the whole Year, except these thirty Days, and made a proportionable Abatement out of his Year's Wages. Here was an *Alternative*: It might have happened, that he had *not* been called out to serve in the Militia, within the Compass of his Year.

Lord MANSFIELD was not in Court.

Mr. Justice ASHON said, this was a particular Case: But he thought it reconcileable to those of the King and the Inhabitants of *Beccles* (*ante*, pa. 230. No. 78.) and the King against the Inhabitants of *Goodnestone*, (*ante*, pa. 251. No. 85.) and distinguishable from that of *Bishop's Hatfield*. In the *Beccles* Case, the Hiring was for a whole Year; and the Contract was not dissolved: For, the Absence was with the Consent of the Master, and dispensed with too, by his receiving the Servant again. In the Case of *Goodnestone*, the Hiring was likewise for a Year; the Master consented to the Absence; the Servant hired a Substitute, and paid him: There was no Dissolution of the Contract. Absence for a particular Time with the Master's Leave, not agreed for at the Time of the Hiring, does not vitiate the Contract. But in the Case of *Bishop's Hatfield*, the original Hiring was with Liberty to let himself, for the Harvest-Month, to any other Person. That made a clear Chasm in the original Contract: It was plainly a Hiring for less than a Year. In the present Case, the Man is hired for a Year, to serve for a Year; but mentions an Event that *might* happen, of his being called out to attend his Militia-Duty; and told his Mistress, that *if* it should so happen, he would either pay a Man to serve in his Place, or make her an Allowance out of his Wages. This is *not a Chasm* in the Contract, but a Dispensation with the personal Service.

Mr. Justice WILLES premised, that Settlements are to be favoured; and that Militia-Men ought not to have any additional Hardships put upon them, if it can be avoided. However, he could not help thinking that the Case of *Bishop's Hatfield* was very like the present Case; and that the Absence was as much Part of the Contract, in the one as in the other. If the Mistress did not expressly agree to it, she at least acquiesced. Indeed, in the present Case, the Servant agreed, "either to find a Substitute, or to abate out of his Wages." Now this was at the Election of the

the Mistress: And she dispensed with his Absence, upon an Abatement out of his Wages. Upon this Distinction, and this only, I would, for the Advantage of Settlements, distinguish this Case from that of *Bishop's Hatfield*.

Mr. Justice ASHHURST said, that in a Case which might affect a vast Number of Militia-Men, he was for leaning in Favour of their gaining Settlements: And he thought this Case to be distinguishable from that of *Bishop's Hatfield*. That Case was certainly no more than a Hiring for eleven Months: But here was an *Alternative*; and it *might happen* "that the Servant should *not* be called out." Therefore he concurred in supporting the Settlement.

BOTH ORDERS QUASHED.

No. 235.

Rex versus Inhabitants of Newnham.

Saturday 27th
Nov. 1773.

MR *Pepys* had moved, on *Thursday* the 11th of this Month, for a Rule to shew Cause why the following Orders should not be quashed: And Mr. *Mansfield* and Mr. *Morgan* now shewed Cause.

Two Justices removed *Hathaway Denton*, *Mary* his Wife, and their six Children, (specifying their Names and Ages, from *Awre* in *Gloucestershire* to *Newnham* in the same County: And the Sessions, upon Appeal, confirmed their Order; stating the following Case —

The said *Hathaway Denton* and one *Richard Mann* his Wife's Father, jointly rented stocked and occupied an Estate at *Newnham* aforesaid, of eighty Pounds a Year, for three Years.

The said *Richard Mann* dying about the End of that Time, the said *Hathaway Denton* soon afterwards did, *alone*, take a House of one *Richard White*, of the Parish of *Awre* aforesaid, at the yearly Rent of three Pounds; and took another Estate consisting of Lands, of one *John Serjeant*, of *Awre* aforesaid, at the yearly Rent of eight Pounds.

The said *Richard Mann* leaving a Widow; and she and the said *Hathaway Denton* being, upon the Death of the said *Richard Mann*,
jointly

jointly possessed of the Remainder of the Stock which had been on the Estate at *Newnham*; they the said *Hathaway Denton* and the said Widow *went and lived* at the said House at *Awre*; and they JOINTLY occupied that House and the said Estate of eight Pounds a Year, for one Year; the Stock on the said House and Estate being partly the Property of the said *Hathaway Denton*, and the other Part the Property of the said Widow; and sometimes one of them sold some Part of the said Stock, and received the Money for the same; and at other Times, the other of them sold other Parts of the said Stock, and received the Money for the same: And that at the Time of taking the said Tenements by *Denton*, neither the said *Richard White* nor the said *John Serjeant* knew of any Connection subsisting between the said *Hathaway Denton* and the said *Elizabeth Mann*. And that a Moiety of the Stock was more than sufficient to stock the said House and Farm: And that *Denton* ONLY was personally responsible for the Rent.

Mr *Pepys*, alleging "that *Hathaway Denton* had clearly gained "a Settlement in *Awre*," moved for a Rule to shew Cause why both these Orders should not be quashed. And such Rule was granted to him.

The Gentlemen who shewed Cause, argued that *Denton* did not gain a Settlement in *Awre*. For, though he had indeed taken eleven Pounds a Year, yet he came to settle upon only the half of eleven Pounds a Year: And it appears, upon the whole, that he never took eleven Pounds a Year for himself. They admitted, that if the whole Taking had been twenty Pounds a Year or upwards, then indeed each Joint-taker would have gained a Settlement: But as the whole, in the present Case, amounted only to eleven, each must be considered as coming to settle on only the half of eleven. Consequently, this Man's Settlement in *Newnham* remained; as he gained none in *Awre*, by coming to settle in a Tenement under the yearly Value of ten Pounds. They cited the Case of *Duns Tew* (*ante*, p. 398. No. 128.) and the Case of *Marden* (*ante*, pa. 311. No. 111.)

Mr. *Pepys*, premising that the Court would lean in Favour of Settlements; and that they would construe the Statutes made on the Subject, all in the same Manner and as one Law; observed, that the Expression used in 13 & 14 C. 2. c. 12. § 1. of "coming "to settle in a Tenement under the yearly Value of ten Pounds," is explained by 9 & 10 W. 3. c. 11. to mean taking a Lease of a Tenement of that yearly Value. The having Credit to take a Lease of a Tenement of that Value is the Criterion of being likely
or

or unlikely to become chargeable. A Person fit to be *trusted* with renting a Tenement of the yearly Value of ten Pounds is supposed *not* likely to become chargeable to the Parish. Here, the Pauper *alone* made the *Application* to take the Tenements; and he *alone* was personally *responsible* for the Rent. The Landlords knew nothing of any one besides him. He cited the Cases of *North Nibley* and *Wotton* under *Edge. Foley*, 90. *South Sidenham* and *Lamerton. Stra.* 58. (*v. ante*, pa. 45.) *Rex v. Inhabitants of Sandwich*, (*ante*, pa. 44. No. 13.) where Lord *Hardwicke* says "that the Ability to occupy a Tenement of ten Pounds a Year" excludes the Presumption of being likely to become chargeable." *Rex v. Inhabitants of Butley*, (*ante*, pa. 107. No. 33.) *Kniver* and *Stone* Parishes, 1 *Str.* 678. *Rex v. Inhabitants of Duns Tew*, (*ante*, 398. No. 128.) *Rex v. Inhabitants of Shenston*, (*ante*, pa. 477. 478. No. 151.) The Credit and Ability is the Criterion. *Rex v. Inhabitants of Llandverras*, (*ante*, pa. 571. No. 184.)

Lord MANSFIELD was not in Court.

THE OTHER THREE JUDGES declared themselves All thoroughly satisfied "that the Settlement was in *Awre*."

Mr. Justice ASTON observed, that if two Persons *jointly* take a Tenement of *less* annual Value than twenty Pounds, it is clear that *this* will *not* gain a Settlement to either of them. But a Man who *takes more* than ten Pounds in yearly Value, may let Part of it to *Undertenants*: And this will not destroy his Settlement, though it will not gain one to such Undertenants, who pay him less than ten Pounds a Year. This was determined in the Case of *Llandverras*, (*ante*, 572, 573. No. 184.) This Woman, the Widow *Mann*, was in the Nature of an Undertenant to the Pauper. The Pauper had the *Credit* of taking the Tenement: He *alone* took the House, and likewise the Lands. Neither of the Landlords knew of any Connection between the Widow and him: And he only was personally responsible for the Rent. They were not Partners in *taking* the Tenement, though they were joint-Occupiers of it. She would gain no Settlement by merely being a joint-Occupier, without having been concerned in taking it: Nor shall the Person who *alone took it*, lose his Settlement, by letting in a joint-Occupier.

If *Fraud* is not *stated*, it shall *not be intended*.

BOTH ORDERS QUASHED.

Rex

Rex *versus* Inhabitants of Stockbridge.

No. 236.

TWO Justices removed *Aaron Alexander, Lucy his Wife,* Monday 29th
and their Son and Daughter, (specifying their Names and Nov. 1773.
Ages,) from *Basingstoke* in the County of *Southampton* to *Stockbridge*
in the same County: And on Appeal to the Sessions, their
Order was confirmed, with 40s. Costs, to be paid by the Church-
wardens and Overseers of *Stockbridge* to those of *Basingstoke*.

The Order of Sessions states the following Facts.—

That the Pauper was legally settled in *Stockbridge*.

That *he deposed* “that he was afterwards HIRED to one *Michael Nicholas* of the Parish of *Wanston*, to serve him as a Boot-Ketcher and occasionally as a *Post-Chaise Driver*; NO TERM for which he was to serve being mentioned. That he accordingly went into the Service of the said *Michael Nicholas*; and continued in it for one Year; and was, during that Time, found by his Master in Meat Drink and Lodging there; but received no Wages for such Service.”

Being cross-examined, *he deposed* that the only Conversation that passed between him and the said *Michael Nicholas* was as follows. The Pauper asked the said *Michael Nicholas* “Whether he wanted a Boot-Ketcher and Driver.” The said *Michael Nicholas* said, “Yes.” The Pauper replied, “that he was willing to serve him.” And thereupon, the said *Michael Nicholas* bid him go into the Yard, and look after the Horses. No Mention was made of Wages, or of Meat Drink or Lodging. That the Pauper quitted the said *Michael Nicholas*; and was afterwards sent for by one *John Watts*, an Innkeeper at *Basingstoke*. That he went to the said *John Watts*, and asked him “if he wanted a Driver.” To which, the said *John Watts* answered, “Yes:” And the Pauper said “He should be glad to serve him.” Upon which, he was ordered by the said *John Watts* to take Care of his Horses, and not to drive them too hard. That no Mention was made of Meat Drink or Lodging. That the Pauper served the said *John Watts* as a Postillion, for a Year, in the Parish of *Basingstoke*; being found by him in Meat Drink and Lodging there; but received no Wages. That he the said Pauper understood, and believes that the said *Michael Nicholas* and *John Watts* both under-

stood, that he was to have his Meat Drink and Lodging while he continued with them; and that the Pauper *thought* he was at Liberty to leave either the said *Michael Nicholas* or *John Watts*, whenever he pleased.

That it was proved by several Witnesses, "that the *customary* Manner of *engaging Postillions*, is as above deposed by the said Pauper;" and "that the Masters and Postillions *think* themselves at Liberty to part whenever they please."

This Court [the Sessions] is of Opinion "that the said Pauper did *not* gain a Settlement, either in the said Parish of *Wanston*, or *Basingstoke*;" and doth accordingly adjudge, that the said recited Order ought to be confirmed: And the same is hereby confirmed accordingly.

On *Thursday 11th November 1773*, it was moved to quash both these Orders; upon a Suggestion that the Justices had determined wrong, in adjudging the Pauper to remain settled at *Stockbridge*, notwithstanding these subsequent Hirings and Services.

Cause was now shewn by Mr. *Dunning* and Mr. *Kerby*, against quashing these Orders. They argued that the subsequent Hirings were *not Hirings for a Year*; nor were so understood, by either the Masters or the Servant. It was neither permanent, nor obligatory. The Master contracted for nothing, not even for Meat, Drink or Lodging: Either Side were, and thought themselves, at full Liberty to quit, at Pleasure. In the Case of *Gregory Stoke* and *Pitminster* Parishes, *Mich. 13^o G. 1.* an Offer to the Girl, "that she should have Meat Drink &c, if she would come and live with her Relation," gained the Girl no Settlement; though she lived four Years as a Servant, in Acceptance of the Offer. So, in the Case of *Weyhill*, (*ante*, pa. 491. No. 157.) six Year's Continuance gained the Child no Settlement; because there was no Contract for Continuance, Service, Wages, or Gratuity. This present Case is not a general Hiring (and consequently a Hiring for a Year,) like that of *Berwick St. John's* (*ante*, pa. 502. No. 160.) "Go into *Ned Hill's* Place." Neither did the Justices look upon it to be a Hiring for a Year: For, if they had considered it as a Hiring for a Year, it would have been contradictory to that Idea, to have been of Opinion, "that the Pauper did *not* gain a Settlement in either *Wanston* or *Basingstoke*."

Mr. *Mansfield* and Mr. *Grose*, who were for quashing the Orders, answered that the Court must take it, that the Justices did believe what was deposed by the Pauper: And it appears, upon the

the whole of the Evidence, to be a good Hiring for a Year. A *general* Hiring is a Hiring for a Year. If it was a Contract *at Will*, it is a Contract for a Year, *till* the Will is determined. Nothing is here stated, which limits the Hiring, or tends to shew that it was meant to be a Hiring for less than a Year: On the contrary, there is enough to ground a fair Presumption that it was meant to be a Hiring for a Year.

LORD MANSFIELD was absent.

Mr. Justice ASTON declared himself fully satisfied that the Justices were mistaken in their Opinion.

A *general indefinite Hiring* is a Hiring *for a Year*; unless something appears, that may raise a Presumption to the contrary. In Proof of which, he cited the Case of *Weybill*, (*ante*, pa. 491. No. 157.) and that of *St. Peter's* in *Dorchester*, (*ante*, pa. 513. No. 165.) the Case of *Wincaunton*, (*ante*, pa. 299. No. 107.) Now here is enough stated, to shew a general indefinite Hiring; which is, by Law, a Hiring for a Year: And nothing is stated, to contradict it, or to raise a Presumption to the contrary. Therefore the Presumption must be "that the Hiring was *for a Year*."

Mr. Justice WILLES and Mr. Justice ASHHURST expressed themselves to the same Effect.

ORDERS QUASHED.

Hilary Term

14 Geo. 3. 1774.

No. 237.

Rex versus Inhabitants of Stockley Pomroy.

Wednesday
26th January
1774.

MR. *Heath* moved, on *Friday 29th June 1773*, to quash an Order of Sessions which vacated an Order of two Justices, made for removing *John Whitten*, and *E. A. W. and S.* his Children, from *Stockley Pomroy* in the County of *Devon*, to *Cheriton Fitzpayne* in the same County.

The Order of Sessions states the following Facts; *viz.* It appearing to us, that *Margaret Enworthy*, being possessed of an *Estate* in the Parish of *Cheriton Fitzpayne*, for a Term of Years determinable on the Death of *Sarah Whitten* the Mother of *John Whitten* the Pauper, in and by her last Will and Testament in Writing duly executed, devised unto her Grandson *John Whitten* the Pauper, the Sum of *ten Pounds a Year*, to be paid by her Executors in Trust, therein named, out of her *Estate*, during the said *John Whitten's* Mother's Life: And if her Grandson *John Whitten* should happen to die before his Mother *Sarah Whitten*, that then his Brother and Sister *William* and *Mary* should have and enjoy the aforesaid *ten Pounds a Year*, of like lawful Money, to be paid by her Executors in Trust therein named, yearly and every Year during the Life of her Daughter *Sarah Whitten* aforesaid. And if in Case *William Whitten* and *Mary Whitten* her Grandchildren aforesaid should either of them happen to die before their Mother *Sarah Whitten*, that then her Will and Pleasure was that the Survivor of them should have and enjoy the aforesaid Legacy of *ten Pounds*

Pounds a Year in Manner and Form aforesaid payable. That the said Testatrix soon afterwards died, without altering or revoking her said last Will and Testament; and left, at the Time of her Decease, the *Leasehold Estate above mentioned*, and *Effects* to the Amount of *thirty two Pounds* only and no more. That the Pauper *John Whitten* the Father, being *legally settled* in the said Parish of *Stockley Pomroy*, and considerably in Debt, in order to avoid his Creditors, went to reside in the said Parish of *Cheriton Fitzpayne*, and there *resided with his Mother* on *the said Leasehold Estate*, and did carry on the Business of a Jobber of Cattle, during the Continuance of the Annuity and while the same was due and payable, for the Space of *forty Days* and upwards, between *Midsummer* in the Year 1770 and *Midsummer* in the Year 1771. And that it does *not* appear to us, that the said Annuity was *rated or assessed* to any of the public Levies.

We therefore do adjudge the Parish of *Stockley Pomroy* to be the last legal Settlement of the Pauper; and *vacate* the said Order.

Mr. *Heath* objected to this Adjudication of the Sessions "that the Pauper's last legal Settlement was in *Stockley Pomroy*": For that he had gained a subsequent one at *Cheriton Fitzpayne*, by residing there forty Days, *upon the Estate out of which* his Annuity of ten Pounds a Year was payable.

Mr. *Dunning* now shewed Cause against quashing the Order of Sessions. He denied that any Settlement could be gained in *Cheriton Fitzpayne*, by this Annuitant's having resided there forty Days, upon the Leasehold Estate which was chargeable with his Annuity. He *lurked* there, as an insolvent Debtor: He did not reside upon his *own*. If an Annuity issues out of a Leasehold Estate, that does not make the Annuity *local*. But this is not a Rent-Charge; nor is it tied up to the Leasehold Estate, or even referred to it: It is payable "*out of the Testatrix's ESTATE*;" generally; all her Estate, leasehold and personal, indefinitely. It is payable out of her *Assets*, as long as they last. It gave the Legatee *no Property* in the Parish of *Cheriton Fitzpayne*: And he could not gain a Settlement there, by residing upon what was *not* his Property.

Mr. *Manfield* and Mr. *Heath* endeavoured to shew that this was a Residing upon his *own*; that he could not have been removed from it; and that he gained a Settlement by residing 40 Days upon it. They argued, that it was a *Rent-Charge* upon and out
of

of this Leasehold Estate : The Words "*out of her Estate*" must mean *this Leasehold Estate* in *Cheriton Fitzpayne*. It is a specific Charge ; and gives a sufficient Property, to gain a Settlement. He had a Right to come upon it, to distrain : And the Removal of him from it would amount to a Disseisin. He could not be considered as a Vagrant or Vagabond, or to be within the Meaning and Intention of the Statute : He was in a much better Condition than a Person who has only Credit enough to rent ten Pounds a Year : Yet such a Person is not within the Intention of this Law.

LORD MANSFIELD said there was no Colour for adjudging the Pauper to have gained a Settlement in *Cheriton Fitzpayne*. He did not go thither, to reside upon his *own* : He absconded there, to avoid his Creditors. This was *no specific* Legacy : It is payable out of her whole personal Estate. But if it were a specific Legacy, has a specific Legatee any Right to go and *live upon* the Estate ? If it had been a Rent-Charge out of a Freehold, it would not give a Right to *live upon* such Freehold. But this Man had only a *pecuniary* Demand. There was no Colour for his going to live upon this Leasehold Estate as his own.

THE OTHER THREE JUDGES concurring,

The RULE was DISCHARGED ; and THE ORDER of SESSIONS AFFIRMED.

Easter

Easter Term

14 Geo. 3. 1774.

Rex *versus* Inhabitants of Creech St. Michael's: No. 238.

ON *Thursday* the 3d of *February* last, Mr. *Hobhouse* moved Monday 25th April 1774.
to quash an Order of Sessions made for discharging an Order of two Justices, made for removing *John Every, Grace* his Wife, and their six Children, (specifying their respective Names and Ages,) from the Parish of *Creech St. Michael* in the County of *Somerset* to the Parish of *Pitminster* in the same County.

The Case stated by the Sessions, was as follows—

Upon hearing the Appeal, (the Pauper *John Every* being run away,) in order to prove his Birth in the Parish of *Pitminster*, the following Copy of a Register was produced, taken from the Parish-Register of *Pitminster*—"Christenings 1735. *John*, Son of *John Every* and *Mary* his Wife, baptized December 5."

John Carter was then called, to prove that the Pauper lived, many Years since, with him: That *John Every*, who lived in *Pitminster*, and died long ago, was considered as the Pauper's Father; and that he knew *Mary Every*, who lives in *Pitminster*, and whom he understood to be the Pauper's Mother, and heard the Pauper call her "*Mother*."

The Court [of Sessions] was of Opinion "that this was NOT sufficient Evidence to prove the Birth, and to identify the Pauper;
" per;

“ per ; as *better* Evidence *might* have been adduced for that Purpose.”

The Mother was proved to have been subpoenaed : But she did not attend ; although it did not appear that she was under any legal Disability of so doing.

LORD MANSFIELD seemed, at the Time of making the Motion, to think this Evidence sufficient.

RULE to shew CAUSE.

And Cause being now shewn by Mr. *Hotchkins* and Mr. *Heath* ; who were opposed by Mr. *Gould*.

THE ORDER of SESSIONS was QUASHED ; and the ORIGINAL ORDER AFFIRMED.

No. 239.

Rex versus Inhabitants of Weddington.

Saturday 7th
May 1744.

UPON the first Day of this Term (*Wednesday 20th April 1774*.) Mr. *Mansfield* moved to quash an Order of Sessions which confirmed an Order of two Justices made for removing *Thomas Lawrence*, *Mary* his Wife, and three Children, (naming them, and specifying their Ages,) from *Chilvers Coton* in *Warwickshire* to *Weddington* in the same County.

The Case agreed on both Sides, and stated upon the Order of Sessions, was this—

Thomas Lawrence, the Pauper, was born in the Parish of *Chilvers Coton*, where his Father then resided under a legal Certificate from the said Parish of *Weddington*, and where he (the Father) still resides under the same Certificate. In *June 1748*, the Pauper, (being then of the Age of eight Years and an half,) bound himself Apprentice by Indenture, with his Father's Consent, (who was a Party to the Indenture,) to *William Meigh* of the said Parish of *Chilvers Coton*, for seven Years ; and served him in the said Parish of *Chilvers Coton*, under the said Indenture, one Year and an half ;
and

and then the said Indenture was *destroyed, by Consent* of the *Master, the Father, and the APPRENTICE*. The Pauper, within half a Year afterwards, bound himself Apprentice by Indenture, with his Father's Consent, to *Thomas Maydlin* of the Parish of *Bulkington* in the said County of *Warwick*, for seven Years; and served the said *Thomas Maydlin* in the said Parish of *Bulkington*, under the said last mentioned Indenture, *four Years*; and then this Indenture was *destroyed by Consent* of the said *Thomas Maydlin* the *Master, the Father, and the APPRENTICE*. The Pauper, after this, returned into the said Parish of *Chilvers Coton*, and bound himself Apprentice, by Indenture, to one *Shaw* in the said Parish of *Chilvers Coton*, for two Years, and *duly served* the said *Shaw* in the same Parish, under the said last mentioned Indenture, the whole of the said *two Years*. The Pauper, in about three Years next after the Expiration of his said Apprenticeship to the said *Shaw*, *hired himself for a Year* to *Lawrence Smith* of the said Parish of *Chilvers Coton*; and *duly served him*, in the same Parish, *for a Year*, under the said Hiring. And the Pauper, being *actually chargeable* to the said Parish of *Chilvers Coton*, was removed by the said Order of the said two Justices, from thence to the said Parish of *Weddington*: And the Court [of Sessions] *confirmed* the said Order.

Mr. *Mansfield's* Objection was, that this Pauper *did not remain* under the Character of a Certificate-Person; having got clear of that Impediment to his gaining a Settlement in the Parish to which he was originally certificated, by having obtained a Settlement in *Bulkington*: *After which*, he was free to gain a subsequent Settlement in the Parish to which he was originally certificated. For, the Child of a certificated Person, born in the Parish to which its Parent came by Certificate, is not under the Restraint of such Certificate, as to any *other* Parish; but may gain a Settlement in any *third* Parish, by serving an Apprenticeship in such third Parish. (*v. ante*, pa. 186. No. 65. and p. 270. No. 92.) And this Pauper did gain a Settlement in *Bulkington*; his first Indenture to *Meigh* having been cancelled and destroyed by the mutual and joint Consent of his Master, his Father, and himself. And by thus gaining a Settlement for himself at *Bulkington*, he got quite clear of the Certificate from *Weddington* to *Chilvers Coton*; and was, afterwards, as much at Liberty to gain a subsequent Settlement at *Chilvers Coton*, as at any other Place.

Mr. *Wallace* and Mr. *Wheler* now shewed Cause. They denied that the Pauper ever gained any Settlement in *Bulkington*: And consequently he remained restrained from gaining a Settlement in *Chilvers Coton*, by any other Act than one of the two specified in 9 & 10 *W. & M. c. 11.* (*v. ante*, pa. 186. No. 65. pa. 260. No. 88. pa. 314. No. 112.) The first Indenture was not properly cancelled: The *Infant* could not consent to the Discharge of it. An Infant's Consent is *void*. It must be done by Justices of Peace, (*v. 20 G. 2 c. 19. § 3.*) or, in *London*, by the Chamberlain. The Consent of the Master and Apprentice will not do, without the Allowance of a Magistrate: And the Father's being a Party to it, makes no Difference. They cited, and relied upon the Case of *Austrey*, (*ante*, pa. 441. No. 142.) where the Infant's Consent was considered as no Consent at all: "For, the Consent of an Infant-Apprentice can signify nothing, nor be of any *Validity*." He was therefore a *continuing* Apprentice to *Meigh*, of *Chilvers Coton*, at the Time of his being bound to *Maydlin*, of *Bulkington*.

Mr. *Mansfield* and Mr. *Dunning*, *contra*, answered, that those who make a Contract, may destroy it. Here, all who joined in making it have joined in destroying it. It must be taken, that it was for the *Benefit* of the Infant, to destroy it: It was for his Benefit, that he was bound out again at *Bulkington*, where he gained a Settlement. And if it was for his Benefit, to destroy it, he might as well join in destroying as in making it. The Interposition of a *Magistrate* is only in Case where there is a *Complaint* against the Master or Mistress: It is upon such Complaint, that they have Power to discharge the Apprentice; not otherwise. The Magistrate has no Jurisdiction, where there is no Difference or Dispute. As to the Case of *Austrey*—That was the Case of a poor Parish-Child; and the general Expression there used must be understood *secundum subjectam materiam*, and applied to the Circumstances of that particular Case. The Principle of that Case is certainly right; and it is an Authority for us. The Principle there laid down is, "that the Apprenticeship of an Infant can't be dissolved without the *Consent of all Parties concerned*." There, the Parish-Child was bound out by the Parish-Officers, with the Allowance of the Magistrates, till his Age of 24, pursuant to the Directions of the Statute. The Magistrates and Parish-Officers were therefore *concerned in the original Contract*: They were Parties, and had not consented; though their Consent,

as Parties to it, was necessary to the Discharge of it. It was rightly determined therefore, in that Case, "that the Infant's Consent signified nothing:" For, there were *others* concerned in the Contract, besides the Master and the Apprentice. Whereas here is the Concurrence and Consent of *all* the Parties concerned; namely, the Master, the Father (and Guardian,) and the Apprentice. They cited the Case of *St. Mary Kallendar in Winchester*, (*ante*, p. 274. No. 95.) to prove "that the Exchange of Indentures between the Father and the Master, with the Consent of the Apprentice, (who must, in that Case be taken to have been an Infant at the Time,) amounts to a Cancelling, an Annihilation, an entire Discharge of them to all Intents and Purposes."

LORD MANSFIELD—The single Question is, "Whether the Indenture of Apprenticeship in *Bulkington* was void, or not; there having been a former Indenture; but such former Indenture having been cancelled, by Agreement between the Master, the Father, and the Apprentice."

The Case of *Austrey*, though very correctly (I believe) reported, might probably mislead the Justices; by their not attending to the Circumstances of the particular Case, to which the general Words there made Use of were to be applied: They seem to have understood them in their absolute and general Sense, without considering their particular Application to the Case then under Consideration; which was the Case of a *Parish*-Apprentice, where the Parish and the Public are interested. The Child was legally bound out by the Parish-Officers till he should be 24: And the Indenture was duly approved by two Justices. The Master, in Consideration of 40 Shillings paid to him by the Apprentice, agreed to discharge him; and delivered up the Indenture to the Apprentice. The Question was, "Whether the *Parish-Officers*, who bound him out under a special Authority, ought not to have been consulted about discharging him, and to have given their Consent to it." The whole Policy of the 43d of *Elizabeth* * * V. 43 Eliz. c. 2. § 5. might be defeated, if the Master and Parish-Infant Apprentice could by their joint-Consent *alone*, without the Consent of the *Parish-Officers*, discharge such a Contract, and set the Apprentice free from it. Such a Construction would evade and invalidate this Law. That Case, therefore, is not applicable to the present. Here, the original Contract was only between the Father, the

Master, and the Apprentice : and *all* of them consent to the Discharge.

An Infant may make his Condition *better* ; though he can't make it *worse*. The Reason why an Infant may bind himself Apprentice is, because it is for his Benefit.

If he was discharged of the former Indenture, he was at Liberty to execute another.

The Case of *St. Mary Kalendar's* is in Point : I see no Distinction that can be made between it and the present Case. The Indentures were exchanged between the Father and the Master, by Consent of the Apprentice, who was clearly then under Age. And Lord Ch. J. *Lee* says—" The Indentures did not subsist ; " because the *Exchange* of the Indentures amounted to a Cancellation of them, and a *Determination* of the Apprenticeship under " them."

Mr. Justice *ASTON* was absent.

Mr. Justice *WILLES* and Mr. Justice *ASHHURST* concurred with LORD *MANSFIELD*.

RULE made ABSOLUTE :
BOTH ORDERS QUASHED.

No. 240.

Rex versus Inhabitants of Tamworth.

Wednesday
May 11th
1774

TWO Justices of the Peace for the City of *Coventry* made an Order for removing *Samson Watkins* from *St. Michael's* Parish in *Coventry* to the Parish of *Tamworth* in *Staffordshire*. They appealed to the Quarter-Sessions of the Peace for the City of *Coventry* and County of the same City ; who confirmed the said original Order ; stating the following Case—

It appeared, that *Samuel Watkins*, the Father of the Pauper, went from *St. Michael's* in the Year 1727, to reside in *Tamworth* ; and brought with him a Paper-Writing purporting to be a Certificate under the Hands and Seals of *Thomas Dagley* and *John Hollyer*, Churchwardens, and *Daniel Gill* and *Samuel Edwards*, Overseers of the Poor, of the said Parish of *St. Michael's*, and allowed by *Abraham Owen* and *Henry Cockram*, then two of his Majesty's

Majesty's Justices of the Peace for the City and County of the City of *Coventry*: Which Paper-Writing is in the Words and Figures following, to wit—" To the Churchwardens and Overseers of the Poor of the Parish of *Tamworth* in the County of *Stafford*, &c.; We the Churchwardens and Overseers of the Poor of the Parish of *St. Michael* in the City of *Coventry*, do hereby own and acknowledge *Samuel Watkins* and Family to be Inhabitants legally settled in our said Parish of *St. Michael*; and that we will own them as such, at any Time or Times hereafter. In Witness whereof, we have hereunto set our Hands and Seals, the 16th Day of *May* in the Year of our Lord 1727. *Thomas Dagley*. O *John Hollyer* O Churchwardens. *John Gill* O *Samuel Edwards* O Overseers." Attested by *Ralph Whitehead*, *John Bryan*; and allowed by us whose Names are underwritten, being two of his Majesty's Justices of the Peace for the City and County of the City of *Coventry*—*Abraham Owen*, Mayor; *Henry Cockram*.

That the said *Samuel Watkins* continued to reside in the said Parish of *Tamworth*; and, about the Year 1740, had a Son born in the same Parish, to wit, *Samson Watkins*, the present Pauper.

That in the Year 1757, the Pauper was legally bound Apprentice to *John Hunter* in the said Parish of *Tamworth*, for five Years; and served him the whole Time, under the said Indenture, in the same Parish.

That the said *Samuel Watkins*, the Father, about ten Years ago, came back to the said Parish of *St. Michael*: And in *May* last, the Pauper *Samson Watkins* came into the said Parish of *St. Michael*, and resided there with his said Father; and being actually chargeable to the said Parish of *St. Michael*, was removed, the 31st Day of *August* last, by the Order of Removal herein before stated, to the Parish and Burrough of *Tamworth* aforesaid: From which Order the said Parish and Burrough of *Tamworth* appealed to this Court, being the next general Quarter-Sessions held for the said City of *Coventry*. Upon which Appeal, the *Vestry-Books* of the said Parish of *St. Michael* were produced by the Vestry-Clerk of the said Parish: In one of which Books are the following Entries, to wit, *April* 3d 1727. " At a Vestry then assembled, for the Choice of Churchwardens for this Year 1727, there was elected and chosen the several Persons underwritten, viz.

" *Gosford*

Decisions upon Orders of Justices, &c.

" Gosford-Street Ward.	1.	" Mr. John Ame.
" Much-Park Street Ward.	2.	" Mr. Robert Bunny.
" Bayley-Lane Ward.	3.	" Mr. John Hollyer.
" Earl-Street Ward.	4.	" Mr. Thomas Dagley.
" Broadgate Ward.	5.	" Mr. John Boyse.
" Spon-Street Ward.	7.	" Mr. William Bellison.
" Thomas Edwards, Vicar.		
" William Lindopp.	} Churchwardens.	" Edward Gravenor.
" William Crump.		" William Westley.
" John Smith.		" William Denham.
" Thomas Lucas.		" George Mason.
" Henry Smith.		" Richard Brookhurst.
" Thomas Lowe.		" John Thacker.
" Francis Ryley.		" William Ratten.
" Robert Richards.		" Thomas Watkin.
" John Gooch.		" Timothy Bird.
		" Joseph Smith.
		" Charles Millward.

" April 9th 1727. The Goods, Plate, and all other Things belonging to the Church, with the Books particularly mentioned in a Catalogue in this Book, and which are therein noted, were delivered to the present Churchwardens, the Day and Year abovewritten."

" John Ame.
 " William Bellison.
 " Robert Bunny his Mark.
 " John Hollyer.
 " Thomas Dagley.
 " John Boyce."

And parol Evidence was likewise given, " that for sixty Years back and upwards, it has been the constant Usage, for the Parish of St. Michael to have six Churchwardens and four Overseers of the Poor for the said Parish."

That no parol Evidence was given, of any particular Number of Churchwardens and Overseers in the Year 172 : But that it appears from various Entries in the said Vestry-Books, " that there has been a uniform and constant Usage in the said Parish of St. Michael, from the Year 1566 to the present Time, to elect annually six Churchwardens for the said Parish. And that the Pauper's

Pauper's Father never gained any Settlement in the said Parish of *Tamworth*.

And the Court [of Sessions] being of Opinion, upon hearing the above Evidence, "that there *were six Churchwardens and four* Overseers of the Poor for the said Parish of *St. Michael*, in and for the Year 1727; and that the said Paper-Writing *purporting to be a Certificate and executed ONLY BY FOUR of the said Parish-Officers*, was NOT a valid Certificate," therefore confirmed the Order of the said two Justices.

On Monday the 7th of February 1774, Mr. *Wilson* moved to quash both these Orders; for that the Justices had made an erroneous Determination, in holding this Certificate *not* to be a valid one: Whereas it really was a valid and sufficient one, he said; and within the Description of 8 W. 3. c. 30. Sect. 1.

Mr. *Wallace* and Mr. *Wheler* now shewed Cause against quashing the Orders. They alledged the Certificate to be invalid, insufficient, and *not* within the Description of 8 W. 3. c. 30. § 1. Which is express "that it must be under the Hands and Seals of the Churchwardens and Overseers, *or the major Part of them.*" Now here were *ten*; and *only four* have signed and sealed this Certificate. The constant Usage of this Parish has been, to have six Churchwardens and four Overseers. None of the ten appear to have been dead; nor is it to be presumed that their Number was reduced to seven, between the 19th of *April* (when the Church-Plate, &c, was delivered to them,) and the 16th of *May*, when these four executed the Certificate. Such a Certificate could not, therefore, bind the Parish of *St. Michael*. Consequently, the Settlement of this Pauper is in *Tamworth*, where he served his regular Apprenticeship.

Mr. *Mansfield*, on the contrary, argued for quashing the Orders. This Certificate, dated 47 Years ago, is regular in the Form and upon the Face of it; and is allowed by two Justices of the City of *Coventry*; and was completely proved. *Tamworth* could not know, nor had any Reason to suspect, that four were not a Majority of the whole Number: Nor indeed is it clear that there were ten elected and sworn and actually in Office in the Year 1727; or alive at the Time when the Certificate was signed and sealed. And if in Fact these four were not the major Part, it was a gross Fraud and Imposition upon *Tamworth*.

LORD MANSFIELD was not now in Court.

THE

THE OTHER THREE JUDGES thought it a hard Case upon *Tamworth*: But they held themselves to be bound down by positive Law. The Statute is express and positive, "that the Certificate must be under the Hands and Seals of the Church-wardens and Overseers, or the *major Part of them*."

And as to *Fraud*, the Court can't presume Fraud, if it be not found: And here none is stated; (though Mr. Justice ASHHURST thought the Justices might have considered it as a Fraud.)

Neither could the Court presume the Death of any of them, between the 9th of *April* and the 16th of *May*.

Mr. Justice ASTON mentioned a Case (*ante*, pa. 581. No. 187.) of *Wooton St. Lawrence*, where the Court agreed "that a Certificate can not conclude the Parish that gives it; unless it be pursuant to this Act of Parliament."

THE COURT therefore DISCHARGED the RULE, and AFFIRMED the ORDERS.

No. 241.

Rex versus Inhabitants of Bath Easton.

Monday 16th
May 1774.

TWO Justices made an Order for the Removal of *Thomas King* from *Enborne* in *Berkshire* to *Bath Easton* in *Somersetshire*: Which Order was, upon an Appeal, confirmed by the Sessions.

The special Case stated upon the Order of Sessions was as follows—

The said *Thomas King*, about the latter End of *August* or Beginning of *September* 1763, was hired as a Covenant-Servant, for a Year, to the Reverend Mr. *William Robinson*; who then resided at *Bath Easton* aforesaid. He accordingly entered upon the said Service, and served, the said Year and some Months over. About the latter End of *April* or Beginning of *May* 1764, the said Mr. *Robinson* went to *Exmouth*, with his Wife and Family, to *bathe* there; and the said *Thomas King* went with them; where they staid till *Michaelmas* following. Upon their coming to *Exmouth*, the said Mr. *Robinson* hired an House for *three Months*: During the whole of which Time, the said *Thomas King* was with him there. Mr. *Robinson*

binson then hired another House, for *two Months*; being obliged to quit the former, on Account of it's being engaged to some other Family for three Months. During the latter two Months, the said Mr. *Robinson* was once absent from *Exmouth* a Fortnight, or three Weeks at most. He returned to *Exmouth*; and discharged the said *Thomas King* there.

And it likewise appeared to the Court, upon the Examination of Mrs. *Sheppard* who lived in the same Service with the said *Thomas King*, that *Exmouth* was a Place resorted to for *Bathing*; and that her Master and Mistress, the said Mr. *Robinson* and his Wife, did bathe there: And being asked as to the Nature of the Place, "What Company there might be there," and "whether she heard of any Balls and Assemblies there," said, "that she attended her own Business, and therefore could give no Account of it; that there were *but one or two* Families there during the whole Time her Master and Family were there;" and "that she did not know of any Balls or Assemblies."

James Petit Andrews Esq; (another Witness) said "that some Time about the Year 1763 or 1764, he went with his Brother and a Party upon a Tour into *Devonshire*, and went to *Exmouth*; that it was a Place where *Company went to bathe*, and where there were *Balls and Assemblies*; and that he considered it in the Nature of *Brightelmstone*."

Bernard Brocas Esq; (another Witness) said "that he himself never was at *Exmouth*; but that he has frequently heard it spoken of as a Place of *public Resort*; and that he knew of several Families going to it in *that Light*."

The Sessions confirm the Order; and further order, by Consent of the Counsel and Attornies on both Sides, "that the said Order of Confirmation, together with the Merits of the said Appeal, be referred to the Judgment of his Majesty's Court of King's Bench at *Westminster*, on the above State of the Facts."

Mr. *Vansittart* moved, on *Friday* the 30th of *April* 1773, to quash these Orders: And on *Thursday* the 13th of *May* following, Mr. *Bearcroft* was to have shewn Cause against it. But Mr. *Bearcroft* objected, that the Case was not fully stated. The material Question, he said, was "whether *Exmouth* is a public Place, or not:" And nothing is here stated, but the mere Evidence. Neither is the Rent of the House which the Master took at *Exmouth*, nor the Value of it stated. It was, in Fact, he said, a ready-furnished Lodging-house only; and the Owner lived in

it. However, upon the present imperfect State of the Case, it must be taken that *Exmouth* is a public Place: And the Master was there occasionally only, and not as his Residence. The Servant did not therefore gain any Settlement there; but his Settlement at *Bath Easton* remained. The only Case like this, he said, was that of the King and the Inhabitants of *Alton*, (*ante*, pa. 418. No. 134.)

Lord MANSFIELD and Mr. Justice ASTON told him, that that Case went upon very particular Circumstances; and the Servant was born under a Certificate too.

However, they agreed with him, that the present Case was incompletely stated; and that it had better be sent back, to be stated more particularly.

It was, accordingly, sent back,
to be RE-STATED.

It was afterwards returned up again, re-stated as follows—*viz.*

The Pauper, about the latter End of *August* or Beginning of *September* 1763, was hired, as a Covenant-Servant, for a Year, to the Reverend Mr. *William Robinson*, who then resided at his House at *Bath-Easton*, as his *only* Place of *general* Residence. He accordingly entered upon the said Service; and served the said Year, and some Months. He served the first Part of the said Year at *Bath-Easton*: But, about the latter End of *April* or Beginning of *May* 1764, he attended the said Mr. *Robinson* with the rest of his Family to *EXMOUTH*, where Mr. *Robinson* went for *Sea-bathing*, and that his Child (who was ill) might also use the *Sea-bathing* at that Place; where the said Mr. *Robinson* hired by the Week, at fourteen or fifteen Shillings by the Week, the whole of a small Lodging-house which belonged to an Inn-Keeper who kept it ready furnished, solely for the Purpose of letting it to Strangers; in which he staid for the Space of ten Weeks; during the whole of which Time, the said Pauper served him there. Mr. *Robinson* then hired, by the Week, Lodgings in another House in *Exmouth*; being obliged to quit the former on Account of its being engaged to a Lady and her Niece from *London*, who came to *Exmouth* for the same Purpose of *Sea-bathing*. He staid at the last mentioned Lodgings, and the Pauper with him, for the Space of two Months,
except

except an Absence of about three Weeks on an Excursion into *Kent*, where the Pauper attended him : After which, he returned to *Exmouth*, and the Pauper with him ; who continued in his Service at *Exmouth*, till his Master DISCHARGED him, *just before* his leaving that Place and returning to his said Residence at *Bath-Easton* ; which was when he gave up the Lodging last mentioned, at the Expiration of the said Space of two Months.

That EXMOUTH was a Place generally resorted to by Persons from *Exeter* and *London*, for *Sea-bathing* : But that Merchants did also resort to it from *Exeter*, as to a *Village* ; just as Merchants from *London* resort to *Greenwich* or *Hampstead*.

That it was in the Nature of BRIGHTHELMSTONE ; but of inferior Estimation.

That no Physician resided at *Exmouth*, or nearer than *Exeter*, which is ten Miles distant : But that the *bathing Accommodations* were extremely good.

That there were BALLS there, and a CARD-ASSEMBLY once a Fortnight.

That the Pauper gained no Settlement after his Discharge as aforesaid.

It is ordered by the Court [of Sessions] that the said Order of the said two Justices be, and the same is, hereby confirmed.

And it is further ordered by this Court [the Sessions] by and with the Consent of the Counsel and Attornies on both Sides, that this present Order of Confirmation, together with the Merits of the said Appeal, be, and the same are, hereby referred to the Judgment of his Majesty's Court of King's Bench at *Westminster*, on the above State of the Facts.

On *Tuesday* 8th of *February* 1774, Mr. *Davenport* moved to quash this re-stated Order of Sessions and the original Order which stood confirmed by it ; and had a Rule to shew Cause.

On *Monday* 16th *May* 1774, Mr. *Bearcroft* and Mr. *Harding* endeavoured to shew that the Pauper's Settlement was at *Bath-Easton*, which was his Master's only Place of general Residence ; and not at *Exmouth*, which now appears to be a public Place of Resort for *Sea-bathing*, and where the Master was only a casual Resident a mere Sojourner, his Domicil being at *Bath-Easton*. They relied on the *Alton-Case*, as laying down a general Rule, exclusive of and unconnected with the particular Circumstances of that Case, " that if a Master goes
" to a public Place, and resides there as a Sojourner forty Days,

“ having a Domicil elsewhere, his Servant who attends him thither shall not gain a Settlement at such public Place, by serving him 40 Days in his casual Residence there.” [*v. ante*, pa. 421.] And they said, that the same Idea was recognized in the Case of *East Ilsey*: (Which Case *v. ante*, No. 223. pa. 723.)

Mr. *Wallace*, who was Counsel for *Bath Easton*, argued for quashing the Orders; and to shew that the Pauper's Settlement was at *Exmouth*, where he served the last forty Days. He denied that any such general Rule was laid down in the *Alton*-Case, as had been suggested. That Case turned upon particular Circumstances: It was never laid down generally, “ that a Servant could not gain a Settlement by serving his Master at *Scarborough* or any other public Place.” Here are none of the Circumstances upon which the Court laid particular Stress in that Case. Here is no Continuation of the original Hiring; no Return of the Master to his former Home; no Re-hiring; no Certificate. The Master went, with his whole Family, to *Exmouth*: It is not material how, or for what Purpose, he went thither. The Servant attended him thither; served him there forty Days; and finished his Service there.

Lord MANSFIELD and Mr. Justice ASTON said, there was a manifest Distinction between the present Case and that of *Alton*. Here, the Service ended at *Exmouth*: In the other Case, it was continued; and was renewed at *Elvetbam*, and the last forty Days were served at *Elvetbam*. There, the Servant was a Certificate-Man from *Alton* to *Elvetbam*, when he was hired by Sir *Harry Calthorpe* at *Elvetbam*. That Case was considered as a Continuation of the Service at *Elvetbam*: This is no Continuation of the Service at *Bath-Easton*. And Lord MANSFIELD mentioned, that in that Case, he laid great Stress upon the Contract not being finished at *Scarborough*, but continued over; and also upon the Servant's being re-hired at *Elvetbam*, and serving there seven Years; and likewise upon his being under a Certificate from *Alton*, when originally hired. So that *Scarborough's* being a Watering-Place was far from being the sole Ground of that Resolution. However, we will think of it: There should be Certainty established in Cases of this Sort. And Mr. Justice ASTON observed, that the Settlement of the Servant does not depend upon the Settlement of the Master: It is the last forty Days Service, that gains a Settlement to the Servant, in the Place where it is performed. Here, the last forty Days Service was performed at *Exmouth*: And the Service ended there. Therefore he gained a Settlement at *Exmouth*.

To

To prove "that the last forty Days Service gains the Settlement," he cited the Cases of *St. Peter's Oxford* and *Faaley-Court*, (*v. ante*, pa. 180. and pa. 422.) and *Silverton* and *Ashton*, which (with some other like Cases) may be seen in the *Ladock* Case, *ante*, p. 180. * See also Mr. Bott's Collection, p. 296. And he did not see any Hardship upon public Places, if after getting a great Deal of Money by Persons coming to reside at them, they should sometimes be charged with a Servant who had gained a Settlement by serving a Master who had hired a House there: The Benefit they receive from the Masters more than balances the Inconveniences likely to arise from the accidental Settlement of the Servant. And if Servants do gain a Settlement by serving forty Days there, yet they generally remain forty Days longer in the Service of their Masters, in the Parishes where their Masters are usually resident in their ordinary Course of Life. So that this Incumbrance upon public Places does not happen so frequently as might perhaps be imagined; nor is, upon the whole, at all injurious to them.

Mr. Justice WILLES thought that though all the Circumstances of the *Alton* Case did not indeed occur in the present Case; and though several other Reasons were given in Support of that Resolution; yet the general Doctrine that had been mentioned seemed to be plainly laid down in that Case; and appeared to him to be founded in good Reason: For, it would be very hard upon public Places of Resort, if they should be obliged to maintain all the Servants of Persons who had come thither for Health or Amusement, and stayed there 40 Days. The Case of *Silverton* and *Ashton* was not a casual Residence of the Master: He had removed from *Ashton* to *Patchel*, and had lived there six Months. In the Case of *Ilsey*, the Rule that has been mentioned seemed to be recognized: And when the present Case was sent down to be re-stated, it seemed to be understood that if *Exmouth* should come out to be a Place of public Resort, like *Scarborough*, this Case would then be within the Reason of the *Alton* Case.

Mr. Justice ASHHURST thought, with Mr. Justice ASTON, that it was reasonable that public Places, which profit greatly by the Resort of Company coming to them for Health or Pleasure, should bear their Share in the Burden of supporting the Servants who have attended them there long enough to gain a Settlement. He also noted a material Difference between the present Case and that of *Alton*; where the Servant did not serve the last forty Days in *Scarborough*, but went back with his Master to *Elvetham*, was re-hired

re-hired there for a third Year, served it out at *Elvetbam*, and continued in his Master's Service there for seven Years more: Whereas the last forty Days of the Service now under Consideration were at *Exmouth*, where the Servant was discharged, and never returned to *Bath-Easton*. He inclined, therefore, at present, to think that his Settlement was at *Exmouth*.

THE COURT took Time to advise.

And on *Wednesday 22d June 1774*,

Lord MANSFIELD delivered their unanimous Opinion "that the Pauper's Settlement was at *Exmouth*."

This is a common Hiring for a Year: There is nothing particular in it. And in the Case of a common Hiring for a Year, a Service with the Master for a Year gains a Settlement to the Servant in the Place where the *last forty Days* of such Service were performed. Here, the Service with the Master for the last forty Days ended at *Exmouth*: There was no Continuance of Service with the Master, after the Master's Return to *Bath-Easton*.

In the *Alton* Case, there were many particular Circumstances. The Servant was born at *Elvetbam*, under a Certificate from *Alton*; and could not gain a Settlement there, by his original Hiring and Service in that Place; nor without a *Discontinuance* of it, and a new subsequent Hiring. But no such Discontinuance ever happened in that Case: The Service did not end at *Scarborough*; it continued. The Servant, at *Scarborough*, proposed a new Agreement for another Year. His Master said, "it would be Time enough, when they returned Home to *Elvetbam*." Whereupon, the Servant continued on, for about six Weeks, until they returned to *Elvetbam*; when he was again hired by his Master for a third Year, and served it out at *Elvetbam*, and continued in his Master's

* V ante, pages 419, 421, 424.

Service for seven Years more, in *Elvetbam* *. So that it was a Continuation of the original Hiring: The Contract did not end at *Scarborough*. The Question therefore, in that Case, was "Whether serving his Master who resided at *Scarborough* as a Sojourner, for above forty Days, should gain the Servant a Settlement there, when his former Hiring at *Elvetbam* was not discontinued nor ended at *Scarborough*, but (on the contrary) continued and went on until and after their Return to the Master's general Residence at *Elvetbam*."

But that Case does not lay it down generally, "that no Servants can gain Settlements at Places where People go to drink Waters, though they serve their Masters or Mistresses there for
" forty

“ forty Days.” If it does, it is wrong : For, no such general Rule ought to be laid down.

We are all Opinion, that this Servant, who went with his Master to this Place, and served him there for the *last forty Days* of his Service, which *ended* at this Place, and was not at all continued at any further Time or Place, is legally settled there, by serving the last forty Days at it.

Mr. Justice WILLES strongly declared his Assent to this Opinion ; and added, that he hoped it would not be understood “ that serving a Master forty Days at a public Place gains the “ Servant a Settlement at that public Place.”

BY THE COURT, unanimously,

THE RULE for QUASHING BOTH
ORDERS was made ABSOLUTE.

Trinity Term

14 Geo. 3. 1774.

No. 242.

Rex *vers.* Inhabitants of Chirk.

Monday 6th
June 1774.

TWO Justices removed *Anne Harry*, Widow, and her seven Children, (particularizing their Names and Ages,) from *Wrexham* in *Denbighshire* to *Chirk* in the same County; And the Sessions, upon an Appeal, confirmed their Order.

The Case was agreed to be—That *John Harry* of *Wrexham*, Slater, (who was Father to *George* who married *Anne Harry*,) was bound an Apprentice, by Indenture, for three Years, without any Consideration, to *Thomas Tamerlaine* of *Wrexham*, Slater. That he served under the said Indenture for nine Months: Then his Master died. That he continued a Fortnight with the Widow, to complete the Work unfinished by his Master. That then, the Mistress having no Employment for him or any other Workmen, said, “he must not stay with her, and that he was at Liberty to go where he thought proper;” and that he, and the other Workmen, quitted her: But he apprehended, that his Mistress had a Right to call him back, to finish his Apprenticeship. That on parting with her, he told his said Mistress “that he was going to his Father, who was a Slater.” That there was no particular Agreement between his Father and his Mistress, to his Knowledge; nor the Indentures delivered up. That his Father lived in the Parish of *Chirk*: And that he continued with him for two or three Years.

On

On *Saturday* the 30th of *April* 1774, Mr. *Wills* moved to quash both these Orders: And Mr. *Kenyon* now shewed Cause against it. Mr. *Thomas Cowper* argued in Support of the Motion.

THE COURT held the Settlement to be in *Wrexham*; and made the Rule absolute, for quashing the Orders. They thought, it sufficiently appeared that the Pauper served forty Days as an Apprentice, in *Wrexham*; and that his Settlement remained there. The Widow does not appear to have had any Interest: No Administration appears to have been taken out.

BOTH ORDERS QUASHED.

V. *ante*, No. 43. and the Note at the End of it, pa. 135.

Rex *vers.* Inhabitants of Painswick.

No. 243.

TWO Justices removed *Jane Skinner*, Widow, and her two Children *Mary* and *William* (aged eight and six respectively) from *Southstoke* in the County of *Somerset* to *Painswick* in the County of *Gloucester*: And the Sessions confirmed their Order; stating the Case specially. Thursd. 16th June 1774.

The special Case stated upon the Order of Sessions—

James Atwood, the first Husband of the Pauper *Jane Skinner*, died about sixteen Years ago, seised of a House and Orchard in *South * Stoke*; leaving the said *Jane* his Widow, and *John Atwood* his Son and Heir by a former Wife, who was then and now is a Soldier in the Guards. The said *Jane*, upon the said *James Atwood's* Death, put the said House in Repair, and entered upon the same House and Orchard; not hearing that any one had a better Right than herself: Nor did she know whether the said *John Atwood* was dead or living. The said *Jane* lived in the said House for about seven Years after the said *James Atwood's* Death; and then intermarried with *William Skinner*, who was settled in *Painswick*. The said *William Skinner* resided with his said Wife in the said House till his Death, which happened about two Years afterwards; and left, by her, the two other Paupers, his Children. Afterwards, after his Decease, the said *Jane* lived in the said

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House,

House, till about three Quarters of a Year ago. She paid one Shilling Quit-Rent. The said *John Atwood*, the Son, claimed the Premises, about four Years after his Father's Death; and again, about seven Years ago; and on *Saturday* before the Sessions, sold his Interest therein, the House being fallen down, for 40 *l.* Sixpence whereof was paid in Earnest.

H. Hobbhouse, for Appellants:

A. Moysey, for Respondents.

On *Wednesday* 4th *May* 1774, *Mr. Morris* moved to quash these Orders; alledging that the legal Settlement of the Paupers was in *South Stock*: For, the Wife of *James Atwood* had a *Right of Dower* in the Tenements whereof he died seised; and her second Husband, by his residing with her thereupon, gained a Settlement for himself, and communicated such his Settlement to his two Children, the other two Paupers.

On *Monday* 6th *June* 1774, *Mr. Moysey* and *Mr. Dunning* shewed Cause. *A Right to Dower* was no Estate at all, they said; nor was it like an equitable Estate: It was like a Title to an Action. It is true, that by *Magna Charta*, * the Widow had a Right to remain 40 Days in the House. But that Right of remaining 40 Days could not give a Settlement to a second Husband whom she married seven Years afterwards, and to his Children by her. Nothing could do that, but a *continuing* Right.

Mr. Thomas Gould and *Mr. Morris* argued in Support of the Rule. This Widow had, by *Magna Charta*, a Right to remain forty Days in the House: She could not be removed during that Time. And whoever is irremovable for forty Days, gains a Settlement. She was not an Object of the Act of Parliament for removing Vagrants likely to become chargeable: It was her own, and she could not be removed from it. And her Husband, if she married, would have the same Right. It would be hard, to put her to a Writ of Dower. Here was an Acquiescence of many Years: No one claimed. She entered, repaired, and paid the Quit-Rent.

THE COURT were of Opinion that this mere RIGHT of Dower was not sufficient to gain a Settlement in *South Stock* for her second Husband and the Children she had by him.

RULE DISCHARGED; and the
ORDERS AFFIRMED.

Note—

Note—

LORD MANSFIELD, upon this 16th of *June*, mentioned what had passed upon the 6th; and that this mere Right of Dower had been likened to the Case of a next of Kin, who can't acquire a Settlement *before* Administration granted; (according to the Cases of *South Sidenham* and *Lamerton**, and *Widworthy* and *Far-** v. ante, pa. *ringdon*†, and that of *Lower Swell*‡.) But here, the Widow^{437.} might (by *Magna Charta*) remain forty Days, and have Estovers; † ante, pa. 109. No. 34. and, if irremovable 40 Days, would gain a Settlement: So that ‡ ante, pa. 436. No. 140. she might have a Claim to have a Settlement for *herself* in *South Stock*. But, to be sure, she had no Capacity of communicating this Settlement to a *second Husband*.

Mr. *Morris* observed, that he had gone so far as to argue, “that after her Quarentine, she had a Capacity of communicating such Settlement to a second Husband and her Children by him.”

Mr. Justice *ASTON* answered, that it was true that she gained a Settlement for *herself*, if it was not a *Castle*, (as it could not be supposed to be:) but she could *not communicate* it to her second Husband; as a Tenant in Dower has no Right to *enter*, till Dower is assigned.

Mr. *Dunning* said, they did not dispute her having thereby gained a Settlement for *herself*: They only insisted, that she *could not communicate* it to a second Husband and her Children by him.

THE COURT agreed with him, in both Points.

Rex *versus* Inhabitants of Woburn.

No. 244.

TWO Justices removed *Hannab Powell* and *Sarah Powell* Tuesday 21st from *Eversholt* to *Woburn*, both in *Bedfordshire*: And the June 1774. Sessions confirm their Order.

Special Case stated on the Order of Sessions—

William Powell, Father of the Paupers, in the Year 1731, came with a *Certificate* from the Parish of *Woburn* to the Parish of *Evershot*.

One *Andrew Lambert*, intituled to a long Term of Years in a Cottage in *Evershot*, by Will dated 1748, devised as follows—

3 K 2

follows—" I give and bequeath to my Kinsman *William Powell's*
 " Son, named *Andrew Powell*, and his Heirs, all and whatsoever
 " I shall die possessed of; he paying certain Legacies herein men-
 " tioned. Also it is my Will and Pleasure, that my Kinsman
 " *William Powell the elder, his Wife and CHILDREN*, SHALL HAVE
 " FREE LIBERTY AND POWER, DURING THEIR NATURAL
 " LIFE, to DWELL in the same House they now live in;" (which
 was the Cottage abovementioned :) And the Testator appointed
 the said *Andrew Powell* his sole Executor.

The said *Andrew Lambert* died in 1750: And the said *Andrew Powell* proved his Will, in the same Year.

The said *William Powell* and his Wife, and their Son *Andrew Powell*, and their two Daughters, the Paupers, from the Year 1750 to February last, the Time of his Death, RESIDED in the said Cottage.

It appeared in Evidence, that about fourteen Years ago, the said *William Powell* was put into Possession of Part of a Barn and four Poles of Ground, in the Parish of *Eversholt*, by Warrant from the Sheriff, executed by *Thomas Hopkins* the Witness, who received a Guinea for his Trouble.

The said *William Powell*, after Possession so delivered to him as aforesaid, let the said Premises at the Rent of five Shillings *per Annum*; and received the said Rent; and cut down a Tree that stood upon the said Ground, and sold it.

This Court [the Sessions] is of Opinion "that the Paupers have
 " not, by Reason of the Facts above stated, any Settlement in
 " *Eversholt*:" and they confirmed the Order.

On *Wednesday 8th June 1774*, Mr. *Andrew Pemberton* moved to quash these Orders; inasmuch as this Devise, which gave the Paupers "*free Liberty and Power, during their natural Lives, to dwell in the House,*" was a Discharge of the Certificate; and that they had gained a Settlement in *Eversholt*.

Mr. *Wallace* and Mr. *Bulstrode* now endeavoured to shew Cause in Support of the Orders. But

THE COURT were clear, that the Objection was unanswerable; and that it was impossible to support them.

RULE made ABSOLUTE:
 BOTH ORDERS QUASHED.

Rex

Rex *versus* Inhabitants of Warblington.

No. 245.

UPON an Appeal to the Sessions, from an Order of two Justices made for the Removal of *William Freemantle* and *Elizabeth* his Wife from the Parish of *St. Olave* in *Chichester* to the Parish of *Warblington* in *Hampshire*, the Justices were much divided in Opinion; but, after having stated the Case, confirmed the original Order, subject to the Opinion of this Court.

Wednesday
22 June
1774.

The special Case stated upon the Sessions-Order—

William Freemantle, the Pauper, was certificated from the Parish of *Warblington* to the Parish of *Subdeanary*; and after living there some Time with his Father, he hired a House and lived in the Parish of *St. Olave*. During the Time he lived in *St. Olave*, a Rate, dated the 27th of *April* 1773, was made for Repair of the Church of *St. Olave*, (which was produced and sworn to by one of the Churchwardens of *St. Olave*,) in which Rate the said *William Freemantle*'s Name appeared in the following Manner, viz. "*William Freemantle to bring Security. L. 0 : 1 : 6.*" Which said one Shilling and Sixpence was received of the Pauper by the said Churchwarden.

And it further appears, upon the Cross-Examination of the said Churchwarden, that said Rate, when first made, was cast up, and no Sum of Money was set against the Name of the said Pauper; but that, afterwards, the Churchwarden, being continued in his Office for the next Year, met the Pauper, who told him "he had got a Certificate from *Warblington* aforesaid, and had delivered it to the Guardians of the Poor-House;" and thereupon the said Churchwarden demanded and received of him the Sum of one Shilling and Sixpence; and afterwards, in the same Day, figured the said Sum of one Shilling and Sixpence in the said Rate of the 27th of *April* 1773: But finding that the Pauper had no such Certificate, he applied to him, a few Days after, and offered to return the said one Shilling and Sixpence; which the said Pauper refused to accept.

The Counsel for the Appellants objected to the Cross-Examination of the said Churchwarden, as to the Matter tending to invalidate the Rate so far as it respected the taxing of the Pauper; and insisted, "that as the Rate was proved by the said Churchwarden, no Evidence FROM HIM ought to be admitted, to in-

" validate

“*validate it* ;” and “ that a Payment being proved by him agree-
 “ able thereto, the Order ought to be quashed.”

But the Court [the Sessions] having over-ruled the Objection ;
 and the Court [of Sessions] being greatly divided on the Merits ;
 the Order was confirmed, subject to the Opinion of the Court of
 King's Bench, on the above stated Case.

Mr. *Mansfield* moved (on *Thursday* 9th *June* 1774) to quash
 these Orders. The legal Settlement appeared, he said, to be in
St. Olave's : This Man appears to have been charged and paid his
 Share towards the public Taxes or Levies of that Parish. His
 Name is in the Rate, with the Sum charged upon him : And it
 was received by the Churchwarden. And what is said to have
 appeared upon the *Cross-Examination* of the Churchwarden, was
 not legally proved : For, he was not a competent Witness to *dis-*
charge his own Parish ; being *interested* in the Matter he was to
 prove. He obtained a Rule to shew Cause.

Mr. *Dunning* and Mr. *Peckham* now shewed Cause. They de-
 nied that he had been *rated*. Paying alone is not sufficient to
 gain a Settlement : The Person must be regularly and properly
rated. This Man was *not* properly rated : The Rating must be
by the Parish. This Man was not rated by the Parish : Quite the
 contrary. In the Rate made by the Parish, no Sum was set against
 his Name ; and it was cast up accordingly : And the Words
 “ to bring Security,” (which mean to bring or produce a *Certi-*
ficate,”) clearly shew that the Parish did not mean or intend to
 rate him. This being the Case, the Churchwarden had no Power
 or Authority to insert these Figures opposite to his Name. The
 Rate was perfected : It was not competent to any one, to alter it.
 This Alteration made in it by the Churchwarden can not operate
 to the Prejudice of the Parish : Nor could the Man have been
 compelled to pay it. When the Churchwarden made this Alter-
 ation in the Rate for the Year 1773, he was Churchwarden for
 the Year 1774 : And in that Character, he could have no Pretence
 of Power to alter the Rate for the preceding Year. And it was an
 Imposition upon him, that occasioned his doing it.

Mr. *Mansfield*, and Mr. *Kerby* (who was on the same Side with
 him,) answered to this latter Observation, that the Parish of
Warblington had no Concern in any Fraud or Imposition : It ra-
 ther seemed, that *St. Olave's* meant to impose upon *them*. The
 Rule of rating ought to be the Circumstances and Abilities of the
 Person to be rated : But, instead of that, the Parish of *St. Olave*
 only

only inquire "Whether he is a Certificated-Man, or not." And thinking him to be so, they have rated him, and demanded and received the Money. He appears upon the Rate, to be charged one and Sixpence towards it: And it would be hard, that when it has been demanded of him and paid by him, he should be debarred of his Settlement. If a Poor's Rate be, in the Form or Manner of making it, not strictly legal, but void; yet if a Person be assessed and pay to it, he shall gain a Settlement. *St. Giles's Cripplegate* and *St. Mary Newington*. *Bott.* 328. *Viner*, Title, "Settlement of the Poor," 386. Letter K. *pl.* 9. This was a sufficient Evidence of his Notoriety in the Parish. *Bott.* 335, 336. *Rex v Stapleton*: (*ante*, No. 200.)

THE COURT were unanimous that this Pauper was *not* properly *rated* to this Church-Rate for the Year 1773. It was necessary for him, both to be *rated*, and to *pay*; in order to gain a Settlement. This Rate was left in Blank, during the whole Year 1773. *No Sum* was set against his Name: but marked "to bring *Security*." It was cast up, without any Charge upon him. No Demand was made upon him till 1774. This is not an informal Rate, or irregular, in the Manner of making it: It is *no Rate* at all. The Alteration, by inserting a Sum, was not made till the following Year, by the Churchwarden of that following Year, without any Authority from the Parish, or Consideration had by them concerning the Ability of the Person rated. The Orders can't be supported.

Note: Mr. Kerby made an Objection to the original Order of the two Justices; namely, That the Complaint appears to be "that the Paupers are likely to become chargeable to the Parish of *St. Olave*, if they shall continue there." Whereas they had no Authority to remove, without a positive Complaint "that the Paupers *are* likely to become chargeable to the Parish that makes the Complaint." And he cited a Case from a Book intitled "Cases and Resolutions of Cases adjudged in the Court of King's Bench, concerning Settlements and Removals &c", (commonly called Cases of Settlements,) *pa.* 27. Case 39. where the Words are "Whereas *Margaret West*, with her six Children, has intruded &c, and *will become* chargeable, if permitted to abide." *Branthwaite* said that this is uncertain:

“*validate it* ;” and “that a Payment being proved by him agree-
 “able thereto, the Order ought to be quashed.”

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 Rule of rating ought to be the Circumstances and Abilities of the
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only inquire "Whether he is a Certificated-Man, or not." And thinking him to be so, they have rated him, and demanded and received the Money. He appears upon the Rate, to be charged one and Sixpence towards it: And it would be hard, that when it has been demanded of him and paid by him, he should be debarred of his Settlement. If a Poor's Rate be, in the Form or Manner of making it, not strictly legal, but void; yet if a Person be assessed and pay to it, he shall gain a Settlement. *St. Giles's Crip-plegate* and *St. Mary Newington. Bott. 328. Viner, Title, "Settlement of the Poor," 386. Letter K. pl. 9.* This was a sufficient Evidence of his Notoriety in the Parish. *Bott. 335, 336. Rex v Stapleton: (ante, No. 200.)*

THE COURT were unanimous that this Pauper was *not* properly *rated* to this Church-Rate for the Year 1773. It was necessary for him, both to be *rated*, and to *pay*; in order to gain a Settlement. This Rate was left in Blank, during the whole Year 1773. *No Sum* was set against his Name: but marked "to bring *Security*." It was cast up, without any Charge upon him. No Demand was made upon him till 1774. This is not an informal Rate, or irregular, in the Manner of making it: It is *no Rate* at all. The Alteration, by inserting a Sum, was not made till the following Year, by the Churchwarden of that following Year, without any Authority from the Parish, or Consideration had by them concerning the Ability of the Person rated. The Orders can't be supported.

Note: Mr. Kerby made an Objection to the original Order of the two Justices; namely, That the Complaint appears to be "that the Paupers are likely to become chargeable to the Parish of *St. Olave*, if they shall continue there." Whereas they had no Authority to remove, without a positive Complaint "that the Paupers *are* likely to become chargeable to the Parish that makes the Complaint." And he cited a Case from a Book intitled "Cases and Resolutions of Cases adjudged in the Court of King's Bench, concerning Settlements and Removals &c", (commonly called Cases of Settlements,) pa. 27. Case 39. where the Words are "Whereas *Margaret West*, with her six Children, has intruded &c, and *will become* chargeable, if permitted to abide." *Branthwaite* said that this is uncertain:

It may be five or ten Years hence. Quashed. He also cited Dr. Burn's Justice of the Peace, Title "Poor, (Removal,)" pa. 439, 440. in the 11th Edition.

LORD MANSFIELD answered him, that the *Adjudication* in the present Case is positive, and not liable to the Objection. It is a *positive Adjudication* "that they *are* likely to become "chargeable:" The Words are "We *do* *adjudge* them "likely to become chargeable to your said Parish of St. "Olave."

Mr. Kerby said, the Adjudication ought to *pursue the Complaint*.

Notwithstanding this Objection, (concerning which, and the Answer to it, see 2 Salk. 491. between the Inhabitants of *Suddlescomb* and *Burwash*, and ante No. 45. pa. 139. and the Case there mentioned, No. 12. pa. 43.)

THE RULE WAS DISCHARGED, and
BOTH ORDERS AFFIRMED.

Michaelmas

Michaelmas Term

15 Geo. 3. 1774.

Rex *versus* Inhabitants of Empingham.

No. 246.

TWO Justices removed *Joseph Langton, Elizabeth* his Wife, Friday 25th and *Ann and Elizabeth* their Daughters, from *Fleckney* in Nov. 1774. *Leicestershire* to *Empingham* in *Rutlandshire*: And the Sessions confirmed their Order; subject to the Opinion and Determination of this Court on the following Facts.

The Pauper was a *Shepherd*; and some short Time before *Harborough-Fair* 1736, hired to *Henry Hubbard* of *Fleckney*, from that *Harborough-Fair* to the *Harborough Fair* following, being one Year, at the Wages of three Pounds; *subject to a Liberty of being absent ELEVEN OR TWELVE DAYS in the Sheep-shearing Season*, and to have the *Benefit of what he got during that Time*.

He entered upon his said Service at *Harborough-Fair* 1736, and served the said *Henry Hubbard* at *Fleckney* for above three Quarters of the Year.

He *went to shear Sheep*, in the *Season*, (which was during that Space of Time,) for ABOUT ELEVEN DAYS; and served the said *Henry Hubbard* at *Empingham*, the *Remainder* of the Year.

He received to his *own Use* what was paid him for the *Sheep-shearing*, over and besides his said Wages of 3 *l*.

One Day in the *Season*, he asked his Master to go a *Sheep-shearing*. His Master said, "he was going out, and could not

“ spare him that Day.” And in Consequence of that, he did not go.

The Pauper, during the Shearing Season, *returned frequently* to his Master's House, and *did what Work was to be done*; and his Master found him his Board, as often as he returned home.

That it appeared to the Court (of Sessions) that this was a Manner *not unusual*, of hiring Shepherds, in that Part of the County.

Mr. *White* moved, on *Wednesday 22d June 1774*, (the last Day of last Term,) to quash these Orders. He denied the Settlement of the Paupers to be in *Empingham*; as this was *not a Hiring for a Year*: For, it was Part of the *original Contract*, to except 11 or 12 Days out of it. He cited the Case of *Bishop's Hatfield*, (*ante*, pa. 439. No. 141.) where a Hiring for a Year, “ with Liberty to “ let himself for the *Harvest-Month* to any other Person,” was holden to be only a Hiring for eleven Months. He had a Rule to shew Cause.

Mr. *Dayrell* now shewed Cause. He argued that this ought not to be considered as an Exception out of the original Contract; but upon the foot of a Leave of Absence consented to by the Master: And he insisted that the present Case was exactly like that of the *Militia-Man*, *ante*, pa. 753. No. 234. and not like that of *Bishop's Hatfield*; nor within the Case of *Macclesfield* (*ante*, pa. 458. No. 146.) nor any of the other Cases which turn upon Exceptions out of the original Contract. [See these Cases all cited or referred to, in my Report of the Case of *St. Agnes*, *ante* p. 671. No. 209. and at the End of the Abridgment of it in pa. 713, 714.]

Mr. *White*, on the contrary, insisted that this is clearly an *Exception* out of the original Contract, *at the Time of making it*; and therefore no Settlement can be gained under *such* a Hiring. In Proof of which, he cited and relied upon two Cases which I have already reported, in the former Continuation of these Decisions: One of them was that of *St. Agnes*, pa. 671. No. 209. the other, that of *Buckland Denham*, pa. 694. No. 218.

THE COURT were unanimously of Opinion, that this was an *Exception out of the Contract*, at the *Time* of making it. They held it to be *Part of the Contract*: It is not to be considered upon the Foot of *Leave of Absence* given by the Master; who, being bound by the Contract, could not refuse agreeing to it.

The

The Militia-Man's, they said, was a particular Case : It was no more than the Law would have implied. And it was holden to be distinguishable from that of *Bishop's Hatfield*. [v. ante, 753 to 756.]

Note. This Rule was once made absolute *without* Defence ; (*viz.* on *Wednesday* 9th *November* 1774 :) But it was afterwards opened again, and defended as above.

RULE made ABSOLUTE :
BOTH ORDERS QUASHED.

Rex versus Inhabitants of Natland.

No. 247.

N. B. I insert this Case, merely to notify that the Rule was discharged for a *collateral Reason* ; not upon the Merits.

THE SESSIONS, upon an Appeal from an Order of two Ju- Monday 28th
stices made for the Removal of a Pauper-Family, of the Nov. 1774.
Name of *Gibson*, from the Township of *Natland* in *Westmoreland*
to that of *Stainton* in the same County, quashed it ; but directed
a Case to be drawn up, for the *Opinion of the Judge of Assize* ; and
agreed to be *determined by his Opinion*.

A Case was accordingly stated, and laid before the Judge of Assize. It was in the following Words ; and received his Sentiments upon it, as is underwritten : *viz.*

In Support of the Order of Removal from *Natland* to *Stainton*, it was proved in Court, that the Pauper *Thomas Gibson*, about fourteen Years ago, took to Farm, of Mr. *Wilson*, a Tenement at *Barrow's Green* in the Township of *Stainton* aforesaid, at the yearly Rent of thirteen Pounds ; and in Pursuance of such Taking, entered upon the said Tenement, and resided thereon for ten Years successively. That in the last Year, the Pauper's Goods being distrained by Mr. *Wilson* for Rent, he was reduced to Poverty, and thereupon quitted *Stainton* and returned to *Natland* with his Wife and Children ; where they were permitted to reside with her Mother (the Widow of *Allan Court*) in Part of her House in which

she then dwelt; which were Part of the Premises devised to her during her chaste Viduity, by her said Husband's Will. That she had let to Farm the Residue of the Premises: And that the Part wherein she dwelt, was of the yearly Value of twenty Shillings. That the Pauper paid no Rent for this House: For, his Wife's Mother helped to maintain him and his Family.

For the Appellants—The Probate-Copy of the Will of the said *Allan Court*, dated the 17th Day of *March* 1738, was produced and read; Whereby he devised in the following Words, to wit,
 “ It is my Will and Mind, and I do hereby give bequeath and
 “ devise unto my loving Wife *Agnes*, for and during her chaste
 “ Viduity, all that my Messuage and Tenement with the Appur-
 “ tenances situate lying and being at *Natland* in the County of
 “ *Westmorland*, and commonly called or known by the Name of
 “ *Bradshaw Wives*; and from and after the Determination of the
 “ chaste Viduity of my said loving Wife *Agnes*, I do hereby give
 “ devise and bequeath the said Messuage Tenement and Premises
 “ with the Rights Members and Appurtenances thereunto be-
 “ longing, unto *Edward Shepherd* of *Natland* aforesaid and said
 “ County of *Westmorland*. Gentleman, and *Jonathan Williamson* of
 “ *Natland Millbeck* in the County aforesaid Yeoman, and to the
 “ Survivor of them and to the Heirs of such Survivor for ever;
 “ to have and to hold the said Messuage Tenement and Premises
 “ with the Appurtenances unto the said *Edward Shepherd* and
 “ *Jonathan Williamson* and to the Survivor of them their and his
 “ Heirs and Assigns for ever; In Trust nevertheless that they the
 “ said *Edward Shepherd* and *Jonathan Williamson* and the Survi-
 “ vor of them, their and his Heirs, shall and will, with all con-
 “ venient Speed, after the Determination of the chaste Viduity of
 “ my said loving Wife *Agnes*, sell and convey the said Messuage
 “ Tenement and Premises with the Appurtenances thereunto
 “ belonging, in open Sale, for the best Price and most Monies
 “ that can or may be had or gotten for the same; and the Mo-
 “ nies arising by such Sale of the Premises hereby appointed to
 “ be sold, shall and will pay apply and dispose of in Manner fol-
 “ lowing, that is to say, First, that my said Trustees shall and will
 “ deduct thereout all necessary and reasonable Costs and Charges
 “ which they or either of them shall be put unto in relation of
 “ the Trust in them reposed in and by this my last Will and
 “ Testament; and, secondly, that my said Trustees, after Deduc-
 “ tion as aforesaid, shall and will divide the Residue of the Monies
 “ or

“ or Price of the Premises hereby ordered to be sold, *equally*
“ *amongst my Sons and Daughters hereafter named, or such of them*
“ *as shall be living at the Time of the Determination of the chaste*
“ *Viduity of my said loving Wife Agnes, that is to say, Allan Court,*
“ *James Court, Mary Court, Ann Court, Agnes Court, Sarah Court,*
“ *and Hannah Court, Share and Share alike ; and in Case any of*
“ *my said Sons or Daughters shall depart this Life before the De-*
“ *termination of the chaste Viduity of my said Wife, leaving*
“ *Child or Children, then and in such Case it is my Will and*
“ *Mind that the Share or Shares of him or her so dying shall be*
“ *equally divided amongst his or her Children so left; and if*
“ *any of my said Sons or Daughters shall happen to die before*
“ *the Determination of my said Wife's Viduity, leaving no Chil-*
“ *dren, then I do hereby give and bequeath the Share or Shares*
“ *of him or her so dying equally amongst such of my said Sons*
“ *or Daughters as shall be living at the Determination of my said*
“ *Wife's Viduity ;*” and appointed his Wife Executrix.

That the Testator died soon after making his said Will ; and on his Death, his Widow, the said *Agnes Court*, entered, and enjoyed the said devised Premises till her Death ; and she died, and was buried the 2d of *June 1769*.

That at the Death of the Testator, all his Children were living : But two of them, namely *James* and *Sarah*, died in the Life-Time of his Widow, without Issue.

That *Hannah*, the Wife of the said Pauper *Thomas Gibson*, was one of the Daughters of the Testator, mentioned in his Will.

That the Pauper and his Wife were then in Possession of *that Part* of the House which the Mother had *permitted them to enjoy* as aforesaid, but not in any other Part of the said devised Premises ; and continued in Possession thereof till *May-Day 1770* ; but paid no Rent, from the Mother's Decease till *Martinmas 1769*.

That Mr. *Shepherd*, the surviving Trustee in the Will, after the Death of the said Testator's Widow, to wit, on the 28th Day of *July 1769*, exposed to be sold and contracted for the Sale of the said devised Premises to one *Findlatter*, for the Sum of 282*l. 5s.* and by Indentures of Lease and Release, bearing Date respectively the 12th and 13th Days of *February 1770*, made between the said *Edward Shepherd*, surviving Devisee in Trust of the last Will and Testament of the said *Allan Court*, of the one Part, and the said
Alexander

Alexander Findlatter of the other Part, in Consideration of 282 l. 5 s. the said *Edward Shepherd* did assign and convey all the said devised Premises unto the said *Alexander Findlatter* and his Heirs : To which Conveyance, the Son and Daughters of the said *Allan Court*, who were the residuary Legatees, are no Parties.

That Mr. *Shepherd*, on the Execution of the Purchase-Deeds, received the Purchase-Money aforesaid ; and, after deducting all necessary Charges, divided the Remainder amongst the Testator's four surviving Daughters, Share and Share alike, (the Son having gone abroad and not having been heard of for many Years ;) and that the Pauper afterwards paid *Findlatter*, the Purchaser, half a Year's Rent due from *Martinmas* to *May-Day* 1770, for that Part of the House he enjoyed as aforesaid.

Upon which, it was insisted for the Appellants, that as the Pauper and his Wife inhabited in *Natland*, in Part of the House devised as aforesaid, from her Mother's Death in *June* 1769, till the same was conveyed in *February* following ; and she being intitled to a distributive Share of the Money to be raised by Sale of the said devised Premises, the Pauper was not removeable during that Time, and consequently GAINED a Settlement in *Natland*.

I have heard Counsel on both Sides ; and am of Opinion
“ the Settlement is in NATLAND.

“ H. GOULD.”

“ *Lancaster, March 26th 1744.*”

Mr. *Wallace* moved (on *Wednesday* 9th *November* 1774,) to quash this Order of Sessions ; and obtained a Rule to shew Cause.

But now, instead of shewing Cause, Mr. *Lee* and Mr. *Dunning* objected against the Court's entering at all into the Matter : For, that it had been by Consent referred to the Judge of Assize ; who had heard Counsel on both Sides, and given his Opinion in Writing thereupon ; which Opinion, so given, ought to be final. They added, that if after this, the Court were to take it up again, and enter into a fresh Discussion of it, no Judge of Assize would ever hereafter accept a Reference of this Kind.

THE COURT saw it in the same Light ; and thought this a very sufficient Reason for their refusing to enter into a fresh Discussion of the Question. And

LORD MANSFIELD observed, that here was a manifest CONSENT of the PARTIES, to this Reference to the Judge ; both Parties

Parties having, by their Counsel, been heard before him: And therefore this was like all other References by Consent. If the Determination of the Judge of Assize should not, in the present Case, be final and conclusive, it would be *adding* to the Trouble and Expence of this Sort of Litigations, which are already too expensive. His Lordship intimated, that he was, as at present advised, of Opinion with the Judge. However, after such a *Consent*, he thought it very improper, to take the Matter up again.

By THE COURT unanimously,

THE RULE was (for *this* Reason)
DISCHARGED.

Hilary Term

15 Geo. 3. 1775.

No. 248.

Rex versus Inhabitants of St. Giles's in the Fields.

Saturday 11th
Feb. 1775.

TWO Justices removed *Esther Orchard*, Wife of *Thomas Orchard* (gone from her,) and their three Children, viz. *Esther* (aged four Years,) *Elizabeth* (aged two Years,) and *Sarah* (aged six Months,) from St. Giles's Parish to St. Ann's Westminster. On Appeal from their Order, the Sessions quash it; stating the following Case—

That the said *Esther Orchard* was married to the said *Thomas*, about eight Years previous to the said Removal; and had, by him, the said Children.

That the Father of the said *Thomas Orchard* was legally settled in the Parish of St. Ann Westminster: And that he the said *Thomas* had not done any Act to gain a Settlement in his own Right; except that about twelve Months previous to their said Marriage, he took a Shop, at fifteen Guineas *per Annum*, in *Piccadilly* in the Parish of St. James Westminster, being Part of the House of one Mrs. *Ladler*; which Shop, at the Time of his taking it, had no Door but that which opened immediately into the Street, nor any Communication with the other Part of the House. That the said *Thomas Orchard* likewise agreed for the Use of the Water and Necessary, (which were within the House;) to which he had Access, in common with the other Lodgers, by another Door belonging to the House, which opened into a Court leading from
Piccadilly

Piccadilly to *Jermyn-Street*; and also agreed, at the Time of taking the Shop, that his Sister (who was Part of his Family) should lodge with Mrs. *Ladler*'s Maid in the Garret of the said House; for which he was to pay an additional Rent over and above the fifteen Guineas. That, in less than a Month after he had taken Possession of the Shop, finding it inconvenient to go out at one Door and in at the other, he applied to Mrs. *Ladler* for Leave to open a Way through the Partition which separated the Shop from the Stair-Case. That she consented thereto; and he opened the same accordingly. That he rented, and constantly laid and resided in the said Shop, and publickly carried on his Trade of a Shoemaker in the same, (having such Communication to the Water, the Necessary, and the Stair-Case by which his Sister went to her Lodging in the Garret, as aforesaid,) until the Time of his said Marriage: And that he continued in the said House, under the said Circumstances, for about two Years afterwards. And that the said Mrs. *Ladler* rented, and resided in the said House during all the Time of the said *Thomas Orchard*'s Residence as aforesaid; and paid thirty Pounds *per Annum* and all parochial Taxes for the same.

This Court [the Sessions] therefore, upon Consideration of the Circumstances above set forth, doth allow the said Appeal, and doth *vacate* the Order of the said two Justices: And the said Appeal is hereby allowed, and the said Order of the said two Justices is hereby *vacated* and set aside accordingly.

Mr. *Lucas* moved (on *Saturday* 28th *January* 1775) to quash this Order of Sessions: And the Court gave him a Rule to shew Cause.

His Objection was, that upon the Facts stated, *Thomas Orchard* could not be considered as having gained a Settlement in St. *James's* Parish by renting a *Tenement* in it of the Value of ten Pounds a Year. He was only a *Lodger*, an *Inmate*, an Occupier of Part of a House: Which, Mr. *Lucas* said, was *not* sufficient to gain him a Settlement.

Mr. *Howarth* now shewed Cause; and argued that it *was* sufficient. It is renting a *Tenement* of the Value of ten Pounds a Year. A House is as much a *Tenement* as Land: And so is Part of a House. So is a Shop. This is a Shop in which the Man lay, lived, and resided; and which had originally no Sort of Communication with the House, but had a distinct Door into the Street. A Person may gain a Settlement by renting only Part of

a House, if what he rents is of the Value of ten Pounds a Year. Mr. Justice *Wilmot* said, in the Case of *Duns Tew* (v. *ante*, 400.) “ that a Tenant may subdivide to Undertenants ; who may “ thereby gain Settlements, if they take the Value of ten Pounds “ a Year.” And he cited the Case of *St. George’s Hanover-Square*, where *John Malcomb* hired the first and second Floor, unfurnished, of a House in *St. James’s Westminster*, of the Value of 40*l.* a Year. [See this Case, *ante*, pa. 692. No. 217.]

Mr. *Lucas* and Mr. *Wallace* argued against the Order of Sessions ; and urged, that it must be an *entire* Tenement of the Value of ten Pounds a Year, to gain a Settlement : Whereas this was only a *Part* of one, in which the Landlady herself resided and paid all the Taxes. They said that the 21 Justices present at the Sessions were divided eleven against ten, and wished to have the Opinion of *this* Court.

THE COURT were of Opinion, “ that this was, undoubt- “ edly, a Tenement of the Value of ten Pounds a Year : ” And the Criterion of this Method of gaining a Settlement is the Ability to rent a Tenement of that Value.

RULE DISCHARGED : and the
ORDER of SESSIONS AFFIRMED.

Easter Term

15 Geo. 3. 1775.

Rex *versus* Inhabitants of Spawnton.

No. 249.

TWO Justices made an Order for the Removal of *Philip Dunning*, the Younger, from the Township of *Welburn* in the North Riding of *Yorkshire* to the Township of *Spawnton* in the same Riding: Which Order was confirmed by the Sessions; who stated the Case specially.

Saturday 13th
May 1745.

The special Case stated upon the Order of Sessions was as follows—

That the Pauper *Philip Dunning*, being about ten or eleven Years of Age, by Indenture, mentioned to be between *Francis Stonehouse* of the Township of *Spawnton*, of the one Part, and *Philip Dunning*, the Pauper, of the other Part, of his own free Will and Consent of his Friends, put and bound himself Apprentice to the said *Francis Stonehouse*, for the Term of seven Years, to learn the Business of a Weaver. That he served three Years under the said Indenture, at *Spawnton*; when, by the CONSENT of the Father, the Pauper, and the Master, the Indenture was cancelled, by tearing off the Seals and Names of the Pauper and Master, on Account of the Pauper's Want of Health.

That he afterwards went to *Welburn*, to live with *James Boynton*, a Miller, from *Whitsuntide* to *Martinmas*: And after being there some Time, his Master agreed to give him a Guinea for the Work that he had done, and was to do till *Martinmas*. That at

3 M 2

Martinmas

Martinmas he hired to the said *Boynton* for a Year, for four Guineas and Stockings.

Some time before *Lammas* following, the Pauper was obliged to quit that Service, on account of his Health; and went to *Scarborough*, to bathe; where he continued seven Weeks: And after he left *Scarborough*, he went to the County-Hospital at *York*.

Mr. *Chambre* moved (on *Wednesday* 15th *June* 1774) to quash both these Orders: For, the legal Settlement of the Pauper was at *Welburn*, not at *Spawnton*. Rule to shew Cause.

Mr. *Wallace* now shewed Cause. He acknowledged the Indenture to be regularly cancelled; as it was done by Consent of all Parties concerned in the Contract: (Which would not have been the Case, if he had been a Parish-Apprentice. *v. ante*, pa. 766. No. 239.) But he alledged, that there was nothing stated sufficient to shew that he had gained any other Settlement elsewhere: and therefore he remained fixed at *Spawnton*.

Mr. *Dunning*, who was Counsel for *Spawnton*, answered, that a subsequent Settlement is sufficiently stated to have been gained at *Welburn*; where he appears to have served more than a Year; viz. from *Whitsuntide* to *Martinmas*, and from *Martinmas* to the following *Lammas*, very nearly.

THE WHOLE COURT was of this Opinion, and accordingly made the Rule absolute.

BOTH ORDERS QUASHED.

No. 250.

Rex versus Inhabitants of Offerton.

Saturday 13th
May 1775.

TWO Justices, by an Order of Removal dated 22d *April* 1774, removed *John Redfearn*, *Hannah* his Wife, *Samuel* (aged eight Years,) *Mary* (aged five Years,) *John* (aged three Years,) and *Joseph* (aged one Year,) their Children, from the Township of *Offerton* in the County of *Chester*, to the Township of *Stockport* in the same County: Which Order was vacated by the Sessions, upon an Appeal, after stating the following Case; viz.

That

That the Pauper *John Redfearn* was originally settled in the Township of *Hattersley* in the Parish of *Mottram Longdendale* in the said County of *Chester*; and when of the Age of twelve Years, he the Pauper was, by an Indenture bearing Date the 25th of *April 1759*, bound an *Apprentice*, by the Churchwardens of the said Parish of *Mottram* and the Overseers of *Hattersley* aforesaid, to *Benjamin Redfearn* a Linen-Weaver in *Hattersley* aforesaid, for the Term of seven Years. That the Pauper was a Party to and executed the said Indenture; which was allowed by two acting Magistrates for the said County, pursuant to the Statute.

That the Pauper removed, with his Master, out of the said Township of *Hattersley* into the Township of *Stockport*, a few Days after the Date and Execution of the said Indenture.

That the Pauper served his said Master five Years and seven Months in the said Township of *Stockport*, under the said Indenture; and lodged at his Master's House in *Stockport* aforesaid, during such Time.

That the Pauper and his Master then entered into the following AGREEMENT — “ That the Pauper, upon paying his Master twelve Pence a Week, and providing for himself, should be at Liberty to work for his own Benefit DURING THE REMAINDER OF HIS APPRENTICESHIP-TERM; and the Master should find the Pauper a Loom, for the Remainder of his Apprenticeship;” (which he did :) “ And that the Master was to receive the twelve Pence a Week, as a SATISFACTION for his Service during the Remainder of his Apprenticeship.”

That the Pauper, at the Time of making such Agreement, was of the Age of eighteen Years; and immediately after the same was concluded, he the Pauper MARRIED, and left his Master *Benjamin Redfearn*.

That neither the Churchwardens of *Mottram* nor the Overseers of *Hattersley* were acquainted or privy to such Agreement being made; NOR was the Indenture cancelled or delivered up.

That the Pauper afterwards resided, as Master of a Family, about five Months, with his Wife, in the Township of *Stockport*; worked for his own Benefit, and was not accountable to his Master for what he earned; nor did his Master provide him with the Goods he worked up, after such Agreement was made: But the Master provided him with a Loom as aforesaid, and received the one Shilling for several Weeks, under the Agreement from the Pauper, whilst he resided at *Stockport*.

That

That the Pauper *took a House*, and removed with his Family into the Township of *Offerton*, which adjoins to the Township of *Stockport*, about *twelve Months* before the said Apprenticeship would have expired, and continued to reside in the said Township of *Offerton* from that Time till the Order of 22d *April* last was granted; the Pauper working for the same Tradesman who employed the Master: But such Tradesman did not settle, nor any ways account with the Master, for the Paupers Work or Earning; but the Master provided him with a Loom, whilst the Pauper resided in *Offerton*.

That the Pauper, during the Time he resided in *Offerton*, (which was for the Remainder of the Time under the Indenture of Apprenticeship, and being near twelve Months,) did not work with any Person by the PARTICULAR Direction or Consent of his said Master, but received the Profits and Emoluments of his Trade to his own Use: But the Master KNEW, during all that Time, when and with whom the Pauper was working; and the Master applied, two different Times, to the Pauper, during the Time that he so resided in *Offerton*, (and before the Time for which the weekly Payments were to be made was expired,) for Money upon account of the further Arrears of twelve Pence a Week due to him in Pursuance of such Agreement; but never received any Money from the Pauper, after he removed into *Offerton*; but often demanded it, and would have received it, if the Pauper had been able to pay him; and often threatened him for not paying it.

The Sessions, upon Consideration of these Facts, and hearing what had been alledged relating to the Settlement of the Paupers, were of Opinion, "that their Settlement is in the said Township of OFFERTON:" And therefore they repeal and make void the said Order of the two Justices, which removed them from thence to *Stockport*.

Mr. Buller having obtained a Rule to shew Cause why this Order of Sessions should not be quashed;

Mr. Wallace, Mr. Pepper Arden, and Mr. Bolton, on Monday 13th February 1775, shewed Cause against quashing it.

The Apprenticeship, they said, was never dissolved: It continued in its full Force, notwithstanding this Agreement, and what was done in Consequence of it. It was all done by the Consent of the Master, and with his Knowledge and Approbation. It was all, therefore, a Service under the Indenture; and gained a Settlement to the Apprentice in the Parish where the last forty Days Service

was performed : Which was in *Offerton*. The Master knew with what Tradesman his Apprentice was working : And that Tradesman must have known that the Pauper was *Benjamin Redfearn's* Apprentice ; as that Tradesman employed *Benjamin Redfearn*, the Master, as well as *John Redfearn* the Apprentice.

They cited the Cases of *Austrey*, (*ante*, pa. 441. No. 142.) and of *Fremington*, (*ante*, pa. 416. No. 133.) and of *Tavistock*, (*ante*, pa. 578. No. 186.) and of *St. Luke's in Middlesex*, (*ante*, p. 542. No. 174.)

Mr. *Buller* and Mr. *Dunning* argued, on the contrary, for quashing the Sessions Order and affirming the original Order which removed the Paupers from *Offerton* as not being their proper Settlement : And they argued that this could *not* be considered as a Service under the Indenture of Apprenticeship. The Agreement itself manifestly proved the contrary. It was express, " that the " Pauper was to work for his *own* Benefit ;" and that the Shilling a Week was in " *Satisfaction* for his Service." In order to make it a Service under the Indenture of Apprenticeship, an *express and explicit Leave* must be given by the Master, *to the particular Service*. So it was resolved, in the *Austrey* Case ; and so the Fact was, in the *Fremington* Case. Here was *no Privity* between the two Masters : Which is also necessary. For which, they cited the Case of *St. Luke's in Middlesex* : (See *ante*, pa. 544.) The Tradesman at *Offerton* could not know that the Pauper was an Apprentice : He appeared to be *sui juris*. Therefore it is not like the Case of *Tavistock*. The twelve Pence a Week was never received by the Master, after the Pauper removed into *Offerton*.

THE COURT were of Opinion, that the Apprenticeship *continued* : There was *no Dissolution* of it, nor Intention to dissolve it. As between the original Master and the Apprentice, the Master knew that the Apprentice worked in *Offerton*, and demanded the twelve Pence a Week for it : An Apprentice may work in any Parish, with the Consent of his Master. And it is probable that the Tradesman with whom he worked knew that he was an Apprentice : For, that Tradesman employed the Master.

They held, therefore, that the Service in *Offerton* was *under* the Indenture of Apprenticeship ; and, consequently, that the Rule ought to be discharged.

RULE DISCHARGED :
ORDER OF SESSIONS AFFIRMED.

Memorandum—

Regula generalis.

Memorandum—

On the first Day of shewing Cause, viz. *Monday 13th February 1775*, Lord MANSFIELD said, His great Object in Cases of this Kind was Certainty : And it was very improper that they should be brought on unexpectedly, upon the last Day of a Term. He had made some general Rules, he said, for the Convenience of the Court ; and he would now take this Occasion to add another, namely, “ THAT ALL SESSIONS-CASES be, for the future, *set down in the CROWN-PAPER* ; and that a *Copy* of the “ Order be left with the junior Judge of the Court, two “ Days before it comes on for Argument.”

LET this be a STANDING RULE
for the future.

No. 251.

Rex versus Inhabitants of Halifax.

Wednesday
May 17th
1775.

TWO Justices removed *Joshua Bragg* and *Lydia* his Wife, and their seven Children (specifying their Names and Ages) from the Township of *Halifax* in the West Riding of *Yorkshire* to the Township of *Warley* in the same Riding : And their Order was, upon an Appeal, discharged by the Sessions ; who stated the following Case—

That *John Bragg*, Father of the Pauper, went with a *Certificate* from *Shercoat* to *Halifax*, in the Year 1733 ; where the Pauper was born, and when he was about fifteen Years of Age, he bound himself an Apprentice to *William Smith* of *Halifax* Stuff-Weaver, for four Years ; and served his Master there, for that Time. After he was out of his Time, and when he was about nineteen Years of Age, his *Father* took a Farm of twelve Pounds *per Annum* in *Warley* ; and went to reside there with the rest of his Family. That his Son, the Pauper, always after the Father went to *Warley*, worked about the Country as a Stuff-Weaver, but came to his Father when he pleased, and had some Holyday-Cloaths at his Father's

ther's House. That when he came and had his Meat with his Father, he *paid* for it. And that the Pauper had done no other Act to gain a Settlement. The Court [of Sessions] discharged the Order which removed him from *Halifax* to *Warley*.

Mr. *Fenton* moved, on *Saturday* 26th *November* 1774, to quash this Order of Sessions; the legal Settlement of *Joshua Bragg* being at *Warley*: For, as he was a *Minor* (only about nineteen) when his Father went to reside in a Farm of 12*l.* a Year at *Warley*, and had gained no Settlement of his own, his Settlement must follow that of his *Father*.

On *Saturday* 4th *February* 1775, Mr. *Tooker* and Mr. *Dunning* shewed Cause. They denied that any Thing appeared upon the State of this Case to shew that the *Father* gained any Settlement at *Warley*, himself: And if he did not, he could not communicate a derivative Settlement there to his Son. Now it is not stated that the *Father* resided there *forty Days*. However, admitting "that he did," yet this Son was *no Part of his Family*. It is rather stated negatively, "that he was *not*:" For, the Words are, "that he went with the *rest* of his Family;" which Expression excludes this Son. He did not accompany his Father thither: And when he did go, it was only to make *Holyday*. They cited the Cases of *Cumner* and *Milton*, 2 *Salk.* 528. *East Woodbey* and *West Woodbey*, 1 *Str.* 438. *St. Michael's Coslany* in *Norwich*, and *St. Matthew's* in *Ipswich*, 2 *Str.* 831. and *Rex v. Inhabitants of Walpole, St. Peter's*, ante, pa. 638. No. 197.

Mr. *Fenton* answered, with regard to the *forty Days* Residence in *Warley*, that in Fact the *Father* resided some *Years* there.

LORD MANSFIELD was not then in Court.

THE OTHER THREE JUDGES thought that the Son could not be considered as emancipated, or independent of or separated from his Father: He went to his House when he pleased, and had Clothes there.

Mr. Justice ASTON said, that where a Son is become *independent* of his Father's Family, or *emancipated* from it, he will not acquire a Settlement where his Father goes to reside: But if he *remains Part* of his Father's Family, he will acquire a derivative Settlement where his Father goes and settles. The Distinction was well laid down, he said, in the *Bugden* Case: (*v. ante*, 270. No. 93.) And he observed, that in the Case of *Walpole St. Peter's*, the Son had been four Years a Soldier, and was emancipated from

his Father's Family, and had ceased to be Part of it. But it is not here stated, *how long* the Father resided at *Warley*.

ORDER sent back, to be RE-STATED.

The Order was afterwards sent up, re-stated.

The re-stated Order is as follows—

John Bragg, the Father of the Pauper, went with a *Certificate*, in the Year 1733, from *Skircoat* to *Halifax*; where the Pauper was born: And when he the Pauper was about fifteen Years of Age, he bound himself an Apprentice, by Indenture, to *William Smith* of *Halifax* Stuff-Weaver, for the Term of *four* Years; and served his Master there, for *that* Time.

Immediately after the Expiration of the said four Years, his Master delivered up the Indenture to the Pauper, who was then *about nineteen* Years old; and his *Father*, who had then taken a *Farm* of *twelve* Pounds *per Annum* in *Warley*, made a Supper on Account of the Expiration of the Apprenticeship: To which Supper the Master, and the Person who had prepared the Indenture, were invited.

That the *Father* hath resided upon the said Farm of twelve Pounds *per Annum* in *Warley*, with the rest of his Family, *ever since*.

That his Son, the Pauper, after the Father went to *Warley*, worked about the Country, as a Stuff-Weaver; but came to his Father's House in *Warley* whenever he pleased; and kept his *Holyday* Clothes there; and considered his Father's House as his own Home, till he was *about twenty* Years and nine Months old; when he married.

That when he came to his Father's House, he paid for what he had; and was his own Master, to go and work for himself, wherever he pleased; and has done no other Act to gain a Settlement since.

The Order being thus re-stated, Mr. *Fenton* (on the second Day of this Term) renewed his Motion to quash it; as it now appears that the Father had resided *above forty* Days at *Warley*.

A Rule was made, to shew Cause: And it was ordered to be set down in the *Crown-Paper*, pursuant to the general Rule made upon the last Day of last *Hilary* Term: *v. ante*, at the End of No. 250. pa. 806.

It

It now came on, accordingly, in the Crown-Paper—

And no Defence being made for the Order, it was QUASHED.

THE * COURT said, they had before sufficiently declared * Lord Mans-
their Opinions eventually; that is, in Case the Fact should come field absent.
out, upon re-stating, to be what it now appears to be.

ORDER OF SESSIONS QUASHED.

ORIGINAL ORDER AFFIRMED.

Rex versus Inhabitants of Carshalton.

No. 252.

TWO Justices made an Order for the Removal of *Thomas Rummels, Mary* his Wife, and *Thomas* their Son (aged about ^{Saturday 20th May 1775.} one Year and three Months,) from the Parish of *Carshalton* in *Surrey* to the Parish of *St. Magnus* in the City of *London*: Which Order the Sessions discharge, upon an Appeal; subject to the Opinion of this Court on the following Case—

The Case stated. The Removal to *St. Magnus*, as the Place of their last legal Settlement, was under a regular Hiring and a Servitude for a Year. The Hiring and Servitude for a Year in *St. Magnus* was fully proved; and that the Pauper was a House-keeper in *Carshalton*, in a House belonging to *William Bridges Esq*; at the yearly Rent of four Pounds; and that the said Pauper had resided several Years in the said House, and had during his Residence there paid the *Land-Tax*.

Carshalton thereupon produced the Land-Tax Books, to shew
“ that the said Pauper, during his said Residence there, had never
“ been RATED at all.” The Title of which Rate-Books are as
followeth—“ *Surry*, A Rate or Assessment of two Shillings and
“ three Pence in the Pound (Rent) made on the Landholders
“ and Inhabitants of the Parish of *Carshalton*, for raising the Sum
“ of *L. 367 : 8 : 0* by a Land-Tax, for the Service of the Year
“ 1771, and made in Manner and Form following.

Yearly Rent	Landlords rated		Names of Occupiers.	Sums assessed.
L. 4 : 0 : 0	W. Bridges Esq;	For Lands and Tenements in the Occupation of	Thomas Rummels.	L. 0 : 9 : 0

N. B. All the other Assessments are made in like Manner.

It was likewise proved, that the Collectors, who are Parishioners, demanded the said Tax *so assessed* of the said Pauper; who paid it; saying, at the same Time, "that he *paid* it in his own Right:" And they, from Time to Time, gave him a Receipt for it, in Manner following, to wit—"Land-Tax, *William Bridges Esq;* Received the Day of of *Thomas Rummels*, the Sum of : So much being assessed on the Landlord, for the four quarterly Payments, pursuant to an Act of Parliament for granting an Aid to his Majesty, by a Land-Tax to be raised in *Great Britain* for the Service of the Year one Thousand seven Hundred and . And the said *Thomas Rummels* also alledged, "that the Landlord never repaid it him again."

Upon THIS Evidence, the Court [of Sessions] found "that the Pauper *Thomas Rummels* was both rated to and paid the said Tax in his own Right;" and adjudged his Settlement to be at *Carshalton*. And thereupon the Appeal is allowed; subject to the Opinion of the Court of King's Bench, on the above Case.

Michael Lade
Thomas Ponton.

Mr. *Lade* moved (on Saturday 13th May 1775) to quash this Order of Sessions; because the Pauper was *not rated* in *Carshalton*: Whereas, a Settlement can't be gained, without being *rated*, as well as paying.

Mr. *Wallace* and Mr. *Lucas* now shewed Cause. They argued, that it was not necessary that the Person should be rated by Name,
or

or expressly as *Occupier*: It is enough if it amounts to full Notice "that such a Person is come to reside in the Parish." And this is so: His Name appears upon the public Parish-Books; he is named as *Occupier*; and the Collectors are stated to be Parishioners; and they demanded and received it of him, and gave him a Receipt for it. And the Court of Sessions have expressly and positively found "that the Pauper was both rated to and paid the Tax in his own Right:" And they have adjudged his Settlement to be in *Carshalton*. They cited and discussed several former Cases upon this Subject, which it would be tedious to repeat here, as I have already both reported them at large and also given an Abridgment of them in the former Volumes; where the Reader may, if he pleases, see them under the following Numbers, viz. No. 21. No. 22. No. 29. No. 30. No. 132. No. 148. No. 155. and No. 192.

Mr. *Bearcroft* and Mr. *Lade* argued in Support of the Rule for quashing the Order of Sessions. Though the Sessions have indeed found "that the Pauper was both rated and paid," and have adjudged his Settlement to be in *Carshalton*; yet they have expressly declared that they did it "upon the Evidence stated." So that they appear to have drawn a wrong Conclusion from what they themselves have stated as the Facts from whence they drew it. But when the Facts and Evidences are thus fully before the Court, the Court will draw the right Conclusion from them: Which is, "that the Pauper was not rated nor settled in *Carshalton*." It appears, clearly, that he was not the Person rated: *William Bridges Esq*; is, in express Terms, the Person rated, as Landlord. It is a Tax upon the Landlord; and the Landlord is bound to repay him: The Receipt is given for the Money, as so much assessed upon the Landlord. His mere saying "that he paid it in his own Right" was therefore of no Consequence: For, it is manifest that he did not. And as to his Name being inserted as *Occupier*, that is only a Description, or rather Part of a Description of the Tenement. They cited the Case of *Painf-wick and Cirencester*, where the Rate was "Thomas Clifford, or Tenant." See this Case at large, ante, pa. 465 to 468. No. 148.

THE COURT, with very great and declared Regret, gave their Opinion "that the Landlord is here the Person rated,
I " and

"and *not the Tenant*." It appeared to be a very hard Case upon the poor Man who was removed: But they thought this Objection too strong to be gotten over. They referred to the Case of the King and the Inhabitants of *Sarratt*, (*ante*, pa. 73. No. 21.) and very unwillingly made the Rule absolute.

ORDER of SESSIONS QUASHED:
ORIGINAL ORDER AFFIRMED.

Trinity Term

15 Geo. 3. 1775.

Rex *vers.* Inhabitants of Carleton.

No. 253.

TWO Justices made an Order for the Removal of *Johanna* Wednesday the Wife of *Simon Mac Owen*, and *Mary, Margaret, Eliza-* 21 June beth, and *John*, their Children, from the Township of *Hoyland-* 1775 *swain* in the West Riding of *Yorkshire* to the Township of *Carleton* in the said West Riding: Which Order was confirmed by the Sessions.

The two Justices, in their Order, state that Complaint was made to them by the Churchwardens and Overseers of *Hoylandswain*,
 “ that *Simon Mac-Owen*, *Johanna* his Wife, and *Mary, Margaret*,
 “ *Elizabeth*, and *John*, their Children, came lately to inhabit in
 “ *Hoylandswain*, not having gained a legal Settlement there; and
 “ that the said *Simon Mac Owen* is an *Irishman*, and has done no
 “ Act in *England* whereby to gain a legal Settlement; and that
 “ the said *Johanna* his Wife, and *Mary, Margaret, Elizabeth*,
 “ and *John*, their Children, are *actually become chargeable* to *Hoy-*
 “ *landswain*.” And they adjudge this Complaint to be true; and the last legal Settlement of the said *Johanna the Wife* of the said *Simon Mac Owen*, and *Mary, Margaret, Elizabeth*, and *John*, their Children, to be in *Carleton*: And therefore they remove them thither.

The Sessions, upon Appeal to them, state the following Case—
viz.

It

It appeared in Evidence, that *John Tyas*, Father of the said *Johanna Mac Owen*, in the Year 1727, came to reside in *Hoylandswain* aforesaid; bringing with him, and delivering to the Overseers of the Poor there, a *Certificate* duly made and allowed, whereby the Churchwardens and Overseers of the Poor of the said Township of *Carleton* certified and acknowledged the said *John Tyas* to be legally settled in their said Township.

That afterwards, whilst the said *John Tyas* resided in the said Township of *Hoylandswain* under the said *Certificate*, the said *Johanna* his Daughter was born there; and continued to live with him until she was upwards of 21 Years of Age. That she afterwards took a House in the same Township of *Hoylandswain*, and resided therein until she was married to the said *Simon Mac Owen*; who, upon his Marriage, went to reside with the said *Johanna* his Wife in her said House, and continued to reside with her therein from the Time of their said Marriage, which was in the Month of *September* 1766, until she the said *Johanna*, and *Mary*, *Margaret*, *Elizabeth*, and *John*, the Wife and Children of the said *Simon Mac Owen*, were removed under the said Order of the 27th Day of *January* last, from the said *Simon Mac Owen*, and from his said Dwelling-house wherein he then lived and still continues to reside.

That the said *Simon Mac Owen*, from the Time of his said Marriage, followed the Business of a Cloathdresser, and thereby maintained himself and his said Wife and Family, until a little Time before the said Order of Removal was made; when, his said Wife and Children being taken ill of a Fever, she the said *Johanna* applied to the Overseers of the Poor of the said Township of *Hoylandswain* for Relief; and that the said *Simon Mac Owen*, her Husband, afterwards applied to a Justice of the Peace for an Order for Relief, and obtained one; and that they were actually relieved by the Overseers of *Hoylandswain*, in Pursuance of the said Order; and that the Reason of the said *Johanna's* asking Relief was because she and her Children were ill of a Fever; and that she was not recovered at the Time she was removed, and could hardly ride.

That they were disbanded of every Thing; the Landlord having seized of all their Goods, for Rent.

That she had hired the House before their Marriage; and that she and her Husband had resided therein until she and her Children were removed; and that he the said *Simon Mac Owen*, her Husband, still continues Tenant and resides in the said House, and acquires

quires his Living by his own Labour and Industry: But that he is an IRISHMAN, and had *not* gained any Settlement in *England*.

That his Wife and Children were SEPARATED *from him* by and under the said Order of Removal, and still continue so to be.

And the Court [of Sessions] confirmed the said Order.

Mr. *Chambre* moved (on *Saturday 27th May 1775*) to quash the Orders. He objected to their Validity, as they would occasion a *Separation* between Husband and Wife; and amount, in Effect, to a Divorce. The Husband continues to live and reside in *Hoylandswain*, and acquires his Living there, by his Labour and Industry, following the Business of a Cloathdresser. His Wife can not be sent from the Parish where he is resident. This was agreed in the Case of *St. Michael's in Bath* and *Nunny in Somersetshire*, 1 *Str.* 544. [I have also a Note of this Case: Which is one of the first Notes I ever took; and the very first of this Kind. The Name of the married Woman, removed without her Husband, was *Elizabeth Daniel*. It was agreed "that the Wife and Children" could not be removed from her Husband."] Mr. *Chambre* had a Rule to shew Cause.

Mr. *Fenton* and Mr. *Tooker* now shewed Cause. They argued, that the Question depended entirely upon the Certificate-Act 8 & 9 *W. 3. c. 30.* which is a positive Law, and can't be set aside; and is likewise a remedial and beneficial Law. It is general, and without Exception; and binds the Parish that gave the Certificate, to receive the Persons certificated, whenever they shall become chargeable. The Words are * "that it shall *oblige* the said Parish" * V. Sect. 1. "to receive and provide for the Person mentioned in it, together
" with his or her Family, as Inhabitants of that Parish, whenever
" he, she, or they shall happen to become chargeable to or be
" forced to ask Relief of the Place to which such Certificate was
" given." Now here is a regular Certificate, containing an explicit Acknowledgment "that *John Tyas* was legally settled in
" *Carleton*:" And *Jobanna*, the Pauper, the Wife of *Simon Mac Owen* and Mother of the Children, was born at *Hoylandswain*, whilst *John Tyas* resided there *under* this Certificate. Therefore the Township of *Carleton* is bound by this Certificate and their own Concession, to receive and provide for *Jobanna* and her Children; and are *concluded and estopped* thereby, to object against it. She has never gained any subsequent Settlement. She could gain none by her Marriage: For, her Husband had none himself. Her

former Settlement is *not suspended* by her Intermarriage with a Man who had none: It *remains*, and is communicated to her Children. And the sending her to *Carleton* does not separate her from her Husband: For, he may go to her there. He ought not to remain in *Hoylandswain*. He has as much Right to be in one of these Places, as in the other. They cited the Case of the King and the Inhabitants of *St. Botolph's* without *Bishopsgate*, *ante*, pa. 367. No. 118. *

* I choose to cite this Case from my *own* Account of it, rather than from any other; partly, because I have reported it very fully, and (I hope) truly; and partly, for the following Reason, namely, that I may thus publicly put in my Claim to have *notified*, at the Time when I published the Case of *Norton*, "that it had been afterwards de-
" liberately, solemnly and unanimously *contradicted* and
" over-ruled by the later settled Resolution of *St. Bo-*
" *tolph's*." The former Resolution (which is my No. 39. page 122.) was "that a married Woman's Maiden-
" Settlement is *SUSPENDED* during her Coverture, so that
" she can not be sent to it in the *Life-time* of her Hus-
" band, though he had none of his own: but it *revives*
" again, after his Death." The latter Resolution (which is my No. 118. page 367.) was, "that it is *NOT suspend-*
" *ed*, but *continues and remains*; having never been deter-
" mined by her Marriage with a Man who had none." To this second Case of *St. Botolph's* I expressly referred, at the End of the former, and mentioned the Substance of it; proposing to give a full Account of it in the Progress of the Work: And I did so accordingly, in my second Volume. Yet, a most respectable Writer upon the same Subject, (and whose Book is in every Body's Hands,) cites the former *over-ruled and contradicted* Case, *as from my Book*; without taking any Notice of my Note at the End of it: And then he immediately recites the second Case which does so overrule and contradict the former, *without* referring to my second Volume, or taking the least Notice of my having reported it at all. So that it must appear, I think, to his Reader, "that I had *only* reported the over-
" ruled Case; and that *some one else* had set the Public
" right, by communicating to them a contradictory Case
" to

“ to that which I had given as an authentic Determination.” At the same Time, I solemnly protest, that I have not the least Suspicion that this very worthy candid and excellent Writer, (for whom I have the highest Esteem,) had any ill Intention in this accidental Omission: I know him too well, to be capable of imagining any Thing like it. But yet I thought it incumbent upon me to explain the Fact. [I will take this Opportunity of requesting any Gentleman who may think it worth his while, upon this Occasion, to look into my Report of the *Norton Case*, that he will be so good as to alter the Date of the Case of *St. Botolph's*, from *thirty* to *fifty five*.]

THE COURT were clear, that the Sessions were wrong; and that their Order must be discharged. A Woman can't be removed from her Husband: As an Authority for which, they referred to the before mentioned Case of *St. Michael's* in *Bath*, and *Nunny*.

This is not like the Case of the Husband being *dead*, or having *left* his Wife. Here, the Husband is alive; *resides at Hoylandswain*; follows the Business of a Cloathdresser there; and maintained his Family by it for many Years, till they were taken ill of this temporary Fever, which obliged them to apply for Relief. The Parish have had the Benefit of his Labour nine Years. The Man is settled in a House, and carries on Business in this Place. There may be no Business for a Cloathdresser at *Carleton*, at all: Or this Man may have no Acquaintance there. He may starve there, though he could maintain his Family at *Hoylandswain*. It is a cruel Behaviour.

RULE made ABSOLUTE:
ORDER of SESSIONS QUASHED.

Rex *versus* Inhabitants of *St. Cuthbert's*, Bedford. No. 254.

MR. *Murphy* moved (on *Tuesday* 20th *June* 1775) to quash Saturday 1st an Order of Sessions which vacates an Order of two Justices made for the Removal of *John Meadows* and his Family (particularizing

ticularizing them) from *St. Cuthbert's* in *Bedford* to *St. James's Clerkenwell* in *Middlesex*.

The Sessions Order was subject to the Opinion of this Court upon the following Case—

Upon hearing the Appeal, after the Appellants had admitted a Settlement in *St. James's Clerkenwell*, they set up a subsequent Settlement in *Kempston*; making it appear that the Pauper had paid two Shillings demanded of him by *Thomas White*, Son of the then Overseer of the Poor of the Parish of *Kempston*, by virtue of a Rate dated the 22d of *June* 1772, not signed by Justices or any Officer of the said Parish of *Kempston*, or any Parishioner thereof: In which Rate, the Name of *John Whiffe*, the Landlord of the Pauper, was named, and not the Name of the Pauper; neither was any Evidence produced in Court, “that the Pauper was ever “rated to any Poor Rate in the Parish of *Kempston*.”

Mr. Bearcroft gave up the Order of Sessions, as insupportable; the Man having never been rated.

RULE made ABSOLUTE :
ORDER of SESSIONS QUASHED.

Michaelmas

Michaelmas Term

16 Geo. 3. 1775.

Rex *versus* Inhabitants of Clare,

No. 255.

MR. *Andrew Pemberton* moved (on *Monday 13th November* ^{Wednesday} *1775*) to quash an Order of Sessions, which confirmed an ^{22d Nov.} Order of two Justices made for the Removal of *William Davy* from ^{1775.} *Cavendish in Suffolk* to *Clare* in the same County; and also the Order thereby confirmed.

The Case stated on the Order of Sessions, was—

That the Pauper, being a Journeyman Miller, at *Michaelmas* 1768 let himself to *Elizabeth Stammers* of *Clare* aforesaid, by the Month, at the Wages of eight Shillings a Month; and that he was at Liberty to depart his said Service at a Months Wages or a Months Warning: And at the Time of his Hiring, it was agreed between the Pauper and the said *Elizabeth Stammers*, “that if
“he continued in her Service till Harvest-time, he should be at
“Liberty, during Harvest-Month, to let himself to any other Per-
“son he chose, for the Harvest-Month.” The Pauper continued five Years in the Service of the said *Elizabeth Stammers*; and during that Time, constantly let himself to some Person or other, for the Harvest, and received the common Wages of eight Shillings from his said Mistress, for the Harvest-Month in each Year; and paid her one Moiety of the Wages earned at such Harvest, annually and during his Service with the said *Elizabeth Stammers*; but generally at the End of every Month, and sometimes weekly, received his

his Wages of eight Shillings a Month, or in that Proportion : And that HE CONSIDERED HIMSELF as a *monthly* Servant, and at Liberty to leave his said Mistress at the End of any Month, paying a Month's Wages, or giving a Months Warning, according to his first Agreement.

Whereupon, this Court [the Sessions] doth confirm the said Order of Removal made as aforesaid ; subject to the Opinion of the Court of King's Bench.

Mr. *Pemberton's* Objection was, that this was *no* Hiring for a Year, which is essentially requisite, by 3 & 4 *W. & M. c. 11. § 7.* It is only a Hiring by the *Month*. Rule to shew Cause.

This Case now standing in the Crown-Paper, (*v. ante*, pa. 806.)

Mr. *Maybew*, who was to have shewn Cause, gave up the Order, as indefensible.

Whereupon, Mr. *Pemberton's* Rule was made absolute.

BOTH ORDERS QUASHED.

V. ante, No. 1. and No. 7. and the Case of *Putney*, in Mr. *Bott's* Collection, pa. 274. No. 525 : (Which Case I did not insert in mine, because it was never determined.) See also, *ante*, pa. 720 and 721.

Hilary Term

16 Geo. 3. 1776.

Rex *versus* Inhabitants of Ideford.

No. 256.

THE Sessions confirmed an Order made by two Justices for Saturday 27th the Removal of *Mary Streete*, Singlewoman, from *Chudleigh* in *Devonshire* to *Ideford* in the same County. Jan. 1776.

The Case stated on the Order of Sessions, was as follows—

Mary Streete, the Pauper, was legally bound an Apprentice, by the Officers of *Chudleigh*, to *Philip Matthews* of that Place, till twenty-one Years or Day of Marriage; and lived with him there, four Years; When he assigned her, by Parole, to *Joseph Stelliford*, of *Ideford* aforesaid; with whom she lived seven Months; when she ran away from *Stelliford*, and returned to the said Parish of *Chudleigh*, and resided there for nine Months, as a Servant to *John Hayes* at a public House, WITH THE KNOWLEDGE, but WITHOUT any express CONSENT of *Matthews* or *Stelliford*: And *John Hayes* did not know that the Pauper was an Apprentice.

Philip Matthews, the original Master, resided in *Chudleigh*, during the Time that the Pauper lived with *Hayes*; and frequently saw her there: But, during her Residence there, applied to *Stelliford* to take her back to *Ideford*; and threatened to put him to Trouble, if he did not.

The Pauper, during the Time she was at *Chudleigh* as aforesaid, was taken ill; and for Part of the Time, so ill in the Workhouse, that she could not be removed; and was then relieved by *Stelliford*, in the Workhouse there.

She

She never returned to *Ideford*; but continued, for the last two Years of her Apprenticeship, in *Chudleigh*, in good Health; where the Apprenticeship expired.

This Court [the Sessions] being of Opinion "that the Pauper gained no Settlement in *Chudleigh*, subsequent to her living in *Ideford*," doth therefore confirm the Order.

Mr. Mansfield moved, on Tuesday 28th November 1775, to quash both these Orders. His Objection to them was, "that the Pauper's Service at *Chudleigh*, after her Return thither from *Ideford*, was a Service under the Apprenticeship." Rule to shew Cause.

* As to his
express Con-
sent, v. ante,
No. 250.

Mr. Hawtrey, Mr. Fanshaw, and Mr. Dunning now shewed Cause. They denied that it could be a Service under the Apprenticeship; in as much as here was no Consent of the Master: On the contrary, he dissented. His mere Knowledge of the Fact signifies nothing: The * express Consent of the Master is necessary. To prove "that a mere Knowledge of the Fact is not sufficient; but that there must be the Consent of the Master;" they cited the Case of *St. Mary Kalendar in Winchester*, ante 275. No. 95.

Mr. Mansfield endeavoured to make out, that this Residence in *Chudleigh* was by the Consent of her Master *Stelliford*: And he manifestly considered her as his Apprentice, whilst she resided there. But

LORD MANSFIELD observed, that here is no Consent of the Master, either express or implied. His mere Knowledge of it does not imply his Consent to it.

Mr. Justice ASTON—There must be the Consent of the Master; in order to the Apprentice's gaining a Settlement in another Parish. And he cited the Case of the King and the Inhabitants of *Clapham*, ante, pa. 267, 268. No. 91. [See also the Cases which I have referred to, at the End of that Case.]

THE COURT were unanimous, that both Orders ought to be affirmed.

BOTH ORDERS AFFIRMED.

Rex

Rex *versus* Inhabitants of Bath-Easton.

No. 257.

TWO Justices removed *John Amesbury* from *Mangotsfield* in *Gloucestershire* to *Bath-Easton* in *Somersetshire*: And the Sessions confirmed their Order; stating the Facts.

Wednesday
Feb. 7th
1776.

The Facts stated upon the Order of Sessions were these—

That the Pauper is a single Man, and was bred a Barber. That in the Year 1748, he was settled at *Bath-Easton*, by being Owner of an Estate there, of the yearly Value of 20*l.* and living in the Parish. That in the Month of *November* 1748, he sold his Estate to one *Samuel Fuller*. That after he had so sold his Estate, he quitted *Bath-Easton*, and went to *Devizes* in the County of *Wilts*, in order to get Employment as a Barber; and accordingly offered himself to one *John Giles* a Barber of the Parish of *St. John* in the said Town of *Devizes*; who ENGAGED him into his Service as a *Journeyman-Barber*, and agreed to give him Meat Drink and Lodging, but would not give him any Wages: In lieu of which, he was to have the *Christmas-Boxes*. The Pauper accepted these Terms: But nothing further passed at that Time; and no particular or precise Time was stipulated or agreed on between the Master and him, that he should serve. That thereupon, Pauper entered into his Service, and lived with said *Giles*, in the Parish of *St. John* in said Town of *Devizes*, for four Years: During which Term, he was found with Meat Drink and Lodging by his said Master in his own House; and he, during all those Years, received the *Christmas-Boxes* that were given by the Customers; and thought himself at Liberty to leave his Master when he thought proper. The Pauper then left his said Master, and went to *Mangotsfield*, and served Mr. *John Bedford* (who keeps a public House there) in his Stable: And said *John Bedford* agreed to find him Meat Drink Washing and Lodging in his own House; but he was not to give him any other Wages than what he might receive as Perquisites of the Stables, from Horses that came there. But no particular or precise Time was stipulated or agreed on, that he should serve: And Pauper apprehended that his Master might have turned him off, or he might have gone away from him, at their Pleasures. Nevertheless, there was no Agreement between them for that Purpose.

That from the Time Pauper began to serve said *John Bedford*, to the Time at which he left him, was *sixteen Years*.

That during said Time of 16 Years, he left said *John Bedford* several Times, at his Pleasure: But from the Time of his first going into the Service, he was with said *John Bedford* *two Years and upwards*, without leaving him at all; and at the End of the said Term of 16 Years, he was with said *John Bedford* for *three Years together*, without Interruption; and during the whole Time he lived with said *John Bedford*, he was found by him in Meat Drink Washing and Lodging.

Mr. *Clifford* moved, on *Wednesday* 31st *January* 1776, to quash these Orders; and had a Rule to shew Cause; the *general* Hirings being subsequent to his original Settlement at *Bath-Easton*.

V. ante, No. 107. *Rex v. Inhabitants of Wincaunton*, H. 24^o G. 2. 1750. pa. 299. to 301. and the Cases I have referred to at the End of it. See also the Case of the Inhabitants of *Stockbridge*, *ante*, No. 236. pa. 759. to 761.

Mr. *Bearcroft* was now to have shewn Cause: But he owned that he could not support the Orders.

RULE made ABSOLUTE:
BOTH ORDERS QUASHED.

Easter Term

16 Geo. 3. 1776.

Rex *versus* Inhabitants of Lowesf.

No. 258.

TWO Justices removed *Edward Morgan* from the Parish of *Lowesf* in the County of *Radnor* to the Parish of *Lanstephan* in the same County. Upon Appeal, the Sessions quash the Order; subject to the Opinion of this Court, upon the following Case.

Wednesday
May 1st
1776.

Edward Morgan was hired for a Year to one *John Williams* of the Parish of *Lanstephan*, where his Master occupied his own Estate. He continued with his Master in *Lanstephan* till some Time before *St. Peter's-tide*; when his Master and Family removed to *Lowesf*, in which Parish his Master rented another Farm. That he continued with his Master in *Lowesf*, till the 16th of *January* following, altogether; when his Master, with his Family, removed to the Parish of *Lanstephan*. The Master, after his Removal to *Lanstephan*, constantly resided there: But the Pauper was sent by his Master back to *Lowesf*, to thrash and look after his Master's Cattle. The Pauper staid in *Lowesf*, upon his Master's Business, two or three Nights and Days, and eat and lodged there; and then returned again to *Lanstephan* for two or three Days or a Week at a Time, and eat and lodged there, and then returned again to *Lowesf*, in like Manner as aforesaid; and so continued between the said Parishes, to the End of his Year, which was the 17th of *May* following. The Pauper is very positive he never continued forty Days together in either of the said Parishes, after the

Decisions upon Orders of Justices, &c.

said sixteenth of *January*: But that he lived and resided as aforesaid, *more than forty Days in the Whole*, in each Parish. That he verily believes he resided most Part of the latter Part of his Service, in LANSTEPHAN, and lodged there the last Night; and from thence went to *Lowest* in the Morning, and took some Cattle of his Master's from thence to the Hay-Fair, where the Pauper finished his Service.

Mr. *Bearcroft* argued for quashing this Order of Sessions; for that the Pauper's Settlement was in *Lanstephan*.

Mr. *Lewis* argued in Support of it; and observed, that it is not positively alledged "that the Pauper lodged the last Night in *Lanstephan*:" He only verily believed that he did.

THE COURT held him to be last legally settled in *Lanstephan*.

ORDER OF SESSIONS QUASHED.

No. 259.

Rex versus Inhabitants of St. Iffey.

Saturday 11th
May 1776.

TWO Justices removed *Richard Congden* and *Honour* his Wife from the Parish of *St. Allen* in the County of *Cornwall*, to the Parish of *St. Iffey* in the same County. Upon Appeal to the Sessions, they state the following Case—

That about 25 Years since, the Pauper *Richard Congden*, together with the said *Honour* his Wife, being then legally settled in the Parish of *St. Iffey*, went into the Parish of *St. Allen*, and there lived with his Father in Law in a Dwelling-house, Part of a small Tenement of about *L. 2: 10: 0 per Ann.* belonging to the said Father in Law; who permitted the Pauper and his said Wife to live and reside therein, till his Death, which happened about 13 Years ago, without paying any Rent for the same. That on the Death of his said Father in Law, he the Pauper, in Right of his said Wife as one of his Daughters and next of Kin of her said Father, continued in Possession of one Moiety of the said Tenement; and that his Brother in Law, in Right of his said Wife, the other Daughter of the said Father in Law and only Sister of the said

Pauper's Wife, became intitled to the other Moiety; but that NO ADMINISTRATION was ever taken of the Effects of the said Father in Law. That the Pauper, soon after the Death of his Father in Law, *purchased* of his said Brother in Law *the other Moiety* of the said Tenement, for the Remainder of the Term therein, then determinable on one Life, for the Sum of 3 *l.* That until the year 1762 or 1763, he never paid any Land-Tax or other Rates or Taxes for the said Tenement: But that in one of those Years there was an *Alteration made on the LAND-TAX Rate* of the said Parish, upon a new Valuation made of the Lands therein; and that about three Months after the Making of the said new Rate, the Collectors of the Land-Tax of the said Parish came to the Pauper's House in the said Parish, and *demand*ed of him 3 *s.* and 4 *d.* or 3 *s.* and 10 *d.* *for the Land-Tax* of the said small Tenement then in his Possession as aforesaid: And upon the Pauper's refusing to pay the said Land-Tax so demanded, the said Officers SHEWED HIM A PAPER WRITING, in order to enforce the Payment thereof by the said Pauper, and *read over the Sum he was to pay*; but he still refusing to pay the said Tax so demanded of him, insisting "that the little Tenement that he possessed was Part of "the Tenement called *Keast's Tenement*", and declaring "that "said *Keast* ought to pay the Land-Tax of the whole Tenement", The Officers soon after came and *took his Cow as a DISTRESS for the same*. That the Pauper then went and paid the Sum demanded of him for the Land-Tax as aforesaid. And that he continued in the Possession of the said Tenement for about four or five Years after the Tenement fell into Hand; and during such four or five Years he paid to the respective Collectors of the said Parish for the Time being, the like yearly Sum for the Land-Tax of the said Tenement; and then quitted the same. The *Church and Poor Rates* of the said Parish were produced to this Court, [the Sessions] in Pursuance of a Notice: And it was admitted "that the Pauper was *never rated* in either of *them*." And no *Land-Tax Rate or Assessment* was PRODUCED, nor any *Duplicate* thereof; nor did it appear that any NOTICE or APPLICATION was made or given by the Appellants to the Commissioners or Assessors of the Land-Tax, or at the Office of the Clerk of the Peace, or to any other Person except to the *Churchwardens and Overseers* of the Poor of the Parish of *St. Allen*, "to produce the Land-Tax Assessments "or Duplicates," to satisfy this Court [the Sessions] that the Pauper was *rated therein*. It is therefore ordered by this Court

[the

[the Sessions] that the said Order be, and the same is, hereby, confirmed &c.

Mr. *Dunning* moved (on *Friday 3d May 1776*) to quash these Orders; as the Settlement of the Paupers appeared, upon the Case stated, to be at *St. Allen's*, and not at *St. Issey's*.

Mr. *Mansfield* and Mr. *Buller* now shewed Cause. They argued that there was no Proof of having gained a Settlement in *St. Allen's*. There was no sufficient Evidence PRODUCED to the Sessions, of this Man's having been *rated* to the Land-Tax there: nor were the legal Means used, in order to enforce the Production of the proper Evidence that might have satisfied that Court "that the Pauper was ever rated in any Assessment to the Land-Tax." The Evidence stated does not prove his having been *rated*: The Officers shewed him a Paper-Writing, and read over a Sum. But the *Assessment itself* ought to have been *produced* to the Sessions; or, at least, Proof of Application to the proper Persons who could have produced it. But

LORD MANSFIELD treated it as a quite clear Case; and that there could not be the least Doubt of this Man's having been *rated* to the Land-Tax. The Officers shewed him a Writing, in order to enforce the Payment: They afterwards distrained upon him for it. The Justices were not to presume that this was done, without his being rated: They could not Doubt of his being rated. What Rule of Law obliges the original Rate to be produced to them?

Mr. Justice ASTON and Mr. Justice WILLES were equally clear;

Mr. Justice ASHHURST was absent.

ORDERS QUASHED.

No. 260.

Rex v. Inhabitants of Biltsdale Kirkham.

Saturday 18th
May 1776.

THE Sessions confirmed an Order of two Justices made for the Removal of *Sarah* the Widow of *Thomas Wilson*, and *John* her Son, from the Township of the *West Side* of *Biltsdale* in the

the North Riding of *Yorkshire*, to the Township of *Bilsdale Kirkham* in the same Riding. They stated the Case specially; viz.

That in *May 1772*, *Thomas Wilson* married *Sarah* the Pauper; and came to reside in the *West Side of Bilsdale*, under a *Certificate from Bilsdale Kirkham*. That at their Marriage, the Pauper was possessed of a Farm set in the *West Side of Bilsdale*, as Tenant from Year to Year to *Thomas Duncombe Esq*; at the yearly Rent of *L. 4: 1: 0*. That after their Marriage, said *Thomas Wilson* entered upon said Farm, and occupied the same till his Death, in *November 1774*.

That after his Death, the Pauper occupied the same Farm till *April 1775*, when she was removed

That upon hearing the Appeal, Witnesses on Behalf of the Appellants were offered, to prove that the said Farm, when occupied by said *Thomas* and the Pauper was of the *REAL annual VALUE* of *L. 15: 0: 0*, and that it has since been *really let for that Rent*, to another Tenant.

But the Court, being of Opinion “ that such Evidence was “ *not admissible*; and that their Judgment ought to be wholly “ guided by the *Rent* it was then *actually let for*,” refused to hear it.

It further appeared in Evidence, that *John Wilson*, the Father of *Thomas Wilson*, was Tenant from Year to Year of another Tenement, under *Mr. Duncombe*, let at the yearly Rent of *L. 14: 10: 3* in *Bilsdale-Kirkham*. That one *George Hoggard* had lent to said *John Wilson* *57 l.* For Security for Repayment, the Name of *George Hoggard* was, by the indulgent Custom of *Mr. Duncombe* to his Tenants, inserted in the Rent-Roll with the Name of said *John Wilson*. That said *George Hoggard* entered upon and occupied the *principal Part* of said Farm: And that said *John Wilson* continued in the Possession of the *Residue*, till his Death, which happened about ten Years ago.

That soon after his Death, one *William Garbut* paid off the said *57 l.* to said *George Hoggard*; and lent the further Sum of *3 l.* to *Johanna* the Widow of said *John Wilson*: Upon which, the following Agreement, dated *28th October 1765*, was made and signed by said *William Garbut* and *Johanna*; that is to say, “ Whereas “ *Johanna Wilson* was possessed of the Tenant-Right of a Farm “ in *Bilsdale*, called *Grange Green*, under *Thomas Duncombe Esq*; “ and that *George Hoggard* was set-in Tenant, for securing *57 l.* “ And whereas *George Hoggard* hath called in the same, she the “ said

“ said *Johanna* hath requested *William Garbut* to advance it;
 “ which he hath agreed to do, on the Day which *Bilsdale*’s next
 “ Rent is paid; and to be set-in Tenant for securing same, instead
 “ of said *George Hoggard*; and that said *Johanna Wilson* agrees
 “ that said *William Garbut* shall have said Farm as a second Te-
 “ nant to enter thereon at Lady-Payment (excepting certain Parts,
 “ of the yearly Value of 5*l.*) with the Consent of the said *Thomas*
 “ *Duncombe* or his Agents, and paying the Lord’s Rent; and the
 “ Interest of said 57*l.* to sink and not to be paid for so long Time
 “ as the said *William Garbut* shall enjoy the Farm; said *William*
 “ *Garbut* shall never be discharged of the Farm by said *Johanna*
 “ *Wilson* or any of her Children, unless they or some of them can
 “ pay said 57*l.* And it is further agreed, that *Thomas* the el-
 “ dest Son of said *Johanna Wilson* shall be set-in Tenant for the
 “ Farm.”

That at *Michaelmas* following, in Pursuance of said Agreement,
 said *William Garbut* and *Thomas Wilson* were admitted Tenants to
 said Farm. That said *William Garbut* occupied the same (except
 as excepted in the above Agreement.) That at the Time of
 making said Agreement, said *Thomas Wilson* was aged 14 Years.
 That in 1772, said *Johanna* gave up the Possession of said ex-
 cepted Part, to *William Garbut*; he paying her, for the same, 5*l.*
 yearly.

That after said Admission, said *William Garbut* paid the Rent
 to Mr. *Duncombe*, and always took Receipts for same in the
 joint-Names of himself and said *Thomas Wilson*: In some of
 which Receipts it is stated to be received “ of *Thomas Wilson*
 “ and *William Garbut*, for Security of 60*l.*” And the Entries
 were so made in the Rental.

That in February 1773, said *Thomas Wilson* and *William Gar-*
but being together, the following Memorandum was signed by
 said *Thomas Wilson*, and agreed to by said *William Garbut*—“ 24th
 “ February 1773. Whereas *William Garbut* the younger is at pre-
 “ sent Tenant to a Farm in *Bilsdale*, called *Grange-Green* Farm;
 “ and that he hath lent me 20*l.* upon my promissory Note; and
 “ that in Consideration thereof, I promise and agree with him
 “ said *William Garbut*, that he may continue Tenant to the said
 “ Farm, unless I have Occasion to occupy it myself. And I fur-
 “ ther promise and agree, that if I cannot repay to said *William*
 “ *Garbut*, said Note-Debt and Interest, that then said *William*
 “ *Garbut* shall have all my Right Title and Interest in said Farm,
 “ with

“ with the Consent of *Thomas Duncombe Esq;* or his Agents.
 “ And if it should happen that I should come to live upon said
 “ Farm myself, then I hereby promise that he the said *William*
 “ *Garbut* shall and may have and rent the Farm I now live upon,
 “ called *Lockton-Farm*, at a reasonable Rent.”

That said *William Garbut* continued in Possession of said Farm;
 paid the Rent; and took Receipts, as above; until the Death of
Thomas Wilson.

Upon which Evidence, the Court, being of Opinion “ that said
 “ *Thomas Wilson* did not gain a Settlement for himself and Fa-
 “ mily in the West Side of *Bilsdale*,” confirm the Order; subject
 to the Opinion of the Court of King’s Bench.

Mr. *Chambre* moved, on *Wednesday 31st January 1776*, to quash
 these Orders, as being grounded upon an erroneous Opinion of
 the Justices. For, the Sessions ought to have admitted the Evi-
 dence which was offered to prove “ that the Farm, when occu-
 “ pied by the Pauper’s Husband (*Thomas Wilson*) was of the real
 “ Value of 15*l.* a Year:” And their Judgment ought to have been
 guided by the real Value, and not wholly by the Rent it was actu-
 ally let for. He cited the Case of *St. Matthew’s Bethnall-Green*,
 (*ante*, No. 185.) where LORD MANSFIELD said—“ Clearly, the
 “ Rent is not material: It is the Value, that is material. And
 “ so was the Case of *South Sydenham and Lamerton*.” (*v. ante*, pa.
 577.) In which, the Court concurred with his Lordship. Mr.
Chambre had a Rule to shew Cause.

Mr. *Dunning* shewed Cause, on *Saturday the 10th of February*
1776. He argued, that the Evidence offered was inapplicable to
 the Point in Question: And therefore the Sessions properly re-
 jected it. The Husband was a Certificate-Man. He married a
 Woman possessed of a Farm let at the yearly Rent of *L 4 : 1 : 0*
 as Tenant from Year to Year. He can’t be considered as gaining
 a Settlement by “ taking a Lease of a Tenement of the yearly
 “ Value of ten Pounds:” Which is what the Statute requires.
 [*v. 9 & 10 W. 3. c. 11.*] If the Value is to be at all considered
 in this Case, it must be the Value of it at the Time when the Wife
 took it: The subsequent Value is out of the Case. Whereas the
 Evidence here stated to have been offered, related only to its Va-
 lue when occupied by the Husband, and what it had been let for
 since, to another Tenant. Such Evidence was therefore not ad-
 missible. However, if it shall be esteemed admissible, it must be
 sent back, for the Case to be re-stated. As to the Farm called

Grange-Green—*Thomas Wilson* never was in Possession of it, or received any Profit from it. It was incumbered, over and over again. He had, at most, only an Equity of Redemption in it: And he never was able to pay it off.

Mr. *Chambre*, on the contrary, argued, that the marrying a Wife possessed of a Lease was *taking a Lease*, within the Meaning of the Act of Parliament; that the Evidence to prove the *real Value* ought to have been admitted; and that even the *L. 4 : 1 : 0* a Year added to the Joint-tenancy of *L. 14 : 10 : 3* a Year, would amount to more than *10l.* a Year in mere *Rent*. And these two may be connected; though he did not reside upon the latter.

LORD MANSFIELD answered him, as to the Joint-tenancy of *Grange-Green*, that *Thomas Wilson* and *William Garbut* appear to be *Mortgagor* and *Mortgagee*, rather than *Joint-tenants*: And the true Way of estimating the Value of his Interest in it, is the Surplus after redeeming the Mortgage, and paying off the Debt.

Mr. Justice ASTON added an Observation, that by their Agreement in *February 1773*, *Garbut* was considered as Tenant and was to have the *whole*, if *Wilson* could not repay him what he had lent him upon his promissory Note: Which he had *not* done. The Reasoning, therefore, from *Wilson's* Interest in *this* Farm, will not hold.

As to the *other Farm*, of which the Wife was in Possession when *Thomas Wilson* married her—

LORD MANSFIELD thought the Sessions wrong, in refusing to hear the Evidence to prove the *real Value*, when occupied by *Thomas Wilson*. In a *Lease at Will*, every new Year is considered as a *new Lease*. The Value of this Farm, in any one Year when this Man held it, is material. The *subsequent* Value is immaterial. It ought to go back, in order to fix what the Value of it was, at any Time *when he held it*.

Mr. Justice ASTON also thought that the Evidence ought to have been heard. He compared the present Case to that of *Burclear* and *East Woodbey*, in *1 Stra. 163, 164*. where the Descent of a Copyhold to the Wife of a Certificate-Man was holden to give him a Settlement; though not one of the two Exceptions mentioned in the *9 & 10 W. 3. c. 11*. being cast upon him by Act and Operation of Law: And it can't be supposed that the Act of Parliament intended to put Certificate Persons in a worse Condition than other Persons taking by Descent. Now this Man came to this Possession, by Operation of Law.

THE COURT held, that if this Farm was of the Value of ten Pounds a Year, in any one Year, *when Thomas Wilson* held it, it was sufficient to gain him a Settlement : But the Value of it *now*, is not material.

SENT down, to be RE-STATED.

Afterwards, it being re-stated “ that the Tenement *was* “ *above the Value* of ten Pounds a Year ;” and

Mr. *Chambre* having renewed his Motion for quashing, and obtained a fresh Rule to shew Cause ;

Both Orders were now quashed, without Opposition.

BOTH ORDERS QUASHED.

Trinity Term

16 Geo. 3. 1776.

No. 261.

Rex *vers.* Inhabitants of Portsea.

Tuesday 11th
June 1776.

THE following Order was confirmed by the Sessions, upon the Evidence hereunder recited.

Upon Appeal of the Parishioners of *Portsea* in the County of *Southampton*, from an Order or Warrant of *Richard Nash* and *William Mill Reeves* Esqrs, two of his Majesty's Justices of the Peace for the County of *Sussex*, for removing *Samuel Rance* and *Elizabeth* his Wife, and *John* and *William* their Infant Children, from *Littlehampton* in the said County of *Sussex* to *Portsea* aforesaid, the General Quarter-Sessions of *Sussex* confirm the Order of the two Justices; subject to the Opinion of the Court of King's Bench upon the following Case, *viz.*

On the Part of the Respondents, an Indenture of Apprenticeship duly executed by *Thomas Rance* the Master of the Pauper, as follows—" This Indenture witnesseth that *Samuel Rance*, Son of
 " *Thomas Rance* of *Portsea* in the County of *Southampton* Labourer,
 " of his own free Will, and by and with the Consent of his Fa-
 " ther, as is testified by the said Father's signing and becoming a
 " Party hereto, doth put himself Apprentice to *Thomas Rance* of
 " *Portsea* aforesaid Labourer, his Executors Administrators and
 " Assigns, to learn his Art, and with him after the Manner of an
 " Apprentice to serve, from the first Day of *January* last past,
 " unto the full End and Term of seven Years from thence next
 " following,

“ following, to be fully complete and ended : During which
“ Term, the said Apprentice his said Master faithfully shall serve,
“ his Secrets keep, his lawful Commands every where gladly do.
“ He shall do no Damage to his said Master, nor see to be done of
“ others ; but to his Power shall let, or forthwith give Warning
“ to his said Master of the same. He shall not waste the Goods
“ of his said Master, nor lend them unlawfully to any. He shall
“ not commit Fornication, nor contract Matrimony within the
“ said Term. He shall not play at Cards Dice Tables or any
“ other unlawful Games, whereby his said Master may have any
“ Loss with his own Goods or others, during the said Term,
“ without Licence of his said Master. He shall neither buy nor
“ sell. He shall not haunt Taverns or Play-Houses ; nor absent
“ himself from his said Master's Service, Day or Night, unlaw-
“ fully ; but in all Things, as a faithful Apprentice he shall be-
“ have himself towards his said Master and all his, during the said
“ Term. And the said Master, in Consideration of the said Ap-
“ prentice's faithful Servitude, his said Apprentice in the Art of a
“ Rope-maker, which he now useth, by the best Means that he
“ can, shall teach and instruct, or cause to be taught and instruct-
“ ed. Sufficient *Meat, Drink, Apparel* of all Kinds, *Physic,*
“ *Surgery,* and *Lodging,* and *all other Necessaries,* during the said
“ Term, to be *found and provided* for the said Apprentice BY THE
“ SAID FATHER : Which the said Father, for himself his Exe-
“ cutors and Administrators, doth *covenant and agree* to find the
“ said Apprentice, during the said Term. For *which Purpose,*
“ the said *Master is to allow* him or them the Sum of four Shil-
“ lings *per Week,* weekly, during the said Term. And for the
“ true Performance of all and every the said Covenants and A-
“ greements, either of the said Parties bindeth himself unto the
“ other, by these Presents. In Witness whereof the Parties above-
“ named to these Indentures interchangeably have put their
“ Hands and Seals the 29th Day of *May* in the 32d Year of the
“ Reign of our Sovereign Lord *George* the 2d, by the Grace of
“ God of *Great Britain France and Ireland* King, Defender of the
“ Faith, in the Year of our Lord 1719. The Mark of *×*
“ *Samuel Rance.* O. The Mark of *×* *Thomas Rance* O.
“ Sealed and delivered (being first duly stampd) in the Presence
“ of *William Cudmore, James Russel.*”

“ MEMORANDUM—It is covenanted and agreed, before the
 “ Sealing and Delivery hereof, that if the within named Ap-
 “ prentice shall absent himself the Service of the said Master, or
 “ negligently lose any Time, (Sickness or Lameness excepted,)
 “ then the Payment of the said four Shillings *per* Week, or the
 “ proportionable Part thereof, is to be deducted for the same;
 “ and the said Father, his Executors and Administrators, is to
 “ make good or pay the Damage thereby sustained, to the said
 “ Master.

“ Borough of *Portsmouth*—Enrolled 23d *October* 1762, by me
 “ *George Huish*, Town-Clerk, and Clerk of the Peace.”

THE INDENTURE was given in Evidence: Which was objected to by the Appellants, because the DUTY *had not been paid* for the Lodging, Board, Physic, and Surgery, covenanted to be found by the Father of the said Apprentice; and because the Indenture had not been stampd with the additional Stamp denoting the 6*d.* or 12*d.* in the Pound, agreeable to the 8th and 9th of *Ann.* To which it was answered by the Counsel for the Respondents, “ that the
 “ 4*s.* *per* Week mentioned in the said Indentures to be paid by
 “ the Master was an *Equivalent*; and the additional Stamp, *unne-*
 “ cessary:” And the Indenture was admitted in Evidence.

And it further appeared in Evidence, That the Pauper served his said Master *Thomas Rance* under the said Indenture, for three Years and an half, in the Parish of *Portsea*.

The Appellants then called *Thomas Rance*, the Master: Who was asked whether a *parol Agreement* was not made, at the Time of signing the said Indenture, between him and the Father of the said Apprentice, “ That he the Master *should not pay*, for the first
 “ two Years of the Apprenticeship, the 4*s.* *per* Week covenanted
 “ in the Indenture to be paid to the Father.” But the Counsel for the Respondents objected to the putting of the Question to this Witness; because it tended to contradict that Deed which he had executed. Whereupon, the Court determined, “ this Que-
 “ stion should not be asked.”

Harry Peckham.
G. Courthorpe.

Mr. *Chambre* moved, on *Friday* 3d *May* 1776, to quash these Orders. He urged the two Objections mentioned in the Order of Sessions; viz. 1st. That the Indenture ought not to have been admitted in Evidence; being void by 8 *Ann. c. 9.* and not available

to any Purpose whatsoever : (See Sections 32, 36, 39, and 45.)
2d. That the Master ought to have been asked the Question, and to have answered it. He had a Rule to shew Cause.

Mr. *Mansfield* now shewed Cause. 1st, He denied that the Father's "finding Meat, Drink, Apparel, Physic, Surgery, and "Lodging, and all other Necessaries for his Son, during his Apprenticeship," could be taken to be either a "direct or indirect GIVING, assigning, conveying, delivering, contracting for, or "securing any Thing or Things, to or for the Use or Benefit of "the Master ;" which are the Words of the 45th Section : And therefore no Duty is to be paid for it, nor does it come within any of the Penalties of that Statute. Consequently, no Stamp was necessary for it ; nor is the Indenture void for Want of Stamp or Payment. It is so far from being a Thing *given* to the Master for his *own Use or Benefit*, that the Master is in Effect the Person who finds all these Things for the Apprentice : For, the Master, "for "THIS Purpose," allows the Father an EQUIVALENT ; namely, "four Shillings *per* Week, weekly, during the Term." 2dly, If the Master had been permitted to have answered the Question which the Counsel for the Appellants would have asked him, he might have got rid of his own Agreement, contrary to what he had covenanted under his Hand and Seal.

Mr. *Bearcroft* and Mr. *Peckham* argued on the other Side. They insisted that the Indenture was *void* by the before mentioned Statute of 8 *Ann. c. 9*. This Finding all these Things by the Father, which the Master should have provided, though it was not, strictly speaking, Money ; yet it was *Money's-worth* : It was to the *Benefit* of the Master, who was bound by Law to find them for his Apprentice. So far as this takes off the Burden from the Master, it is an Advantage to him, and a Benefit within the 45th Section of this Act : And therefore a Duty ought to be paid in Proportion to the *Value* of it, (whatever that Value may be,) both within the Words and Reason of this Statute. And they denied that the four Shillings a Week, which the Master was to allow to the Father, could be considered upon the Foot of an *Equivalent*. They cited a Case from Mr. *Bott's* Book, Title "Apprentices", pa. 155. No. 281. *Pennington v. Sudall*, H. 10. G. 3. [Which was a Case not unlike to the present one ; but received no Determination.]

As to the 2d Objection—They said, that the Master was not estopped by his Deed under his Hand and Seal; but ought to have answered the Question. It was *not his own Case*; but the Case of a *third Person*. And he was not liable to any Penalty inflicted by the Act of Parliament: For, the Time limited by it (*v. § 35.*) is not yet expired. If he had been permitted to answer the Question, his Answer would have been (as the Fact was) “that it was *not* to be paid for the first two Years.” And if so, it could not have been an *Equivalent*, beyond all Doubt. Indeed, neither the Quarter-Sessions nor this Court can determine “whether the whole is an *Equivalent*, or not.” There is, at the Stamp-Office, a proper Officer to estimate and settle Matters of this Kind.

THE COURT were unanimous upon both Points. As to the former, there was Nothing before them to shew that the four Shillings a Week was *not* an *Equivalent*: And why should it not be so? It *might* be an ample one. They were not to presume “that it was *not* an *Equivalent*.” It appears to be allowed by the Master to the Father *for the Purpose* of thus providing for his Son. The cited Case of *Pennington* and *Sudall* is no Authority: The Point was not determined. The Court was glad to be relieved of it by Mr. *Wallace's* Offer.

Mr. Justice ASTON hinted, that the 45th Section of this Act, which says, “that where any Thing or Things, *not being lawful Money of Great Britain*, shall directly or indirectly be “given,” means *such* other *Equivalents* as a Horse, or other valuable Thing of that Sort; *not* such an Agreement as this is, “to provide Necessaries for a Son.”

As to the second Point, they All held, that the Master was *not* bound to answer the Question which the Appellant's Counsel put to him.

RULE DISCHARGED :
BOTH ORDERS AFFIRMED.

Rex *versus* Inhabitants of Kingsweare.

No. 262.

UPON an Appeal to the Quarter-Sessions of the County of *Devon*, by the Churchwardens and Overseers of the Poor of the Parish of *Holberton* in the said County, from an Order of two Justices made for the Removal of *John Sherrers* and *Jane* his Wife from the Parish of *Kingsweare* in the said County to the said Parish of *Holberton*, The following Case was stated at the Sessions. Saturday 27th
June 1776.

That the Pauper had a derivative Settlement in *Holberton*: And that *John Kingston*, the Pauper's Grandfather, went with the Pauper to *William Cholwich* of the Parish of *Halwell*, and desired the said *Cholwich* to take the Pauper as his Apprentice. That the said *Cholwich* said "he would take him as his Apprentice; and " would give him Meat Drink Washing and Lodging, until he " was twenty-one." The said Pauper, being then sixteen Years of Age, came and lived with the said *Cholwich* in *Halwell* accordingly, until he was 21. That NO INDENTURES were executed, or talked of by any of the Parties. That the Pauper being frequently asked " Whether he considered himself as an Apprentice, or not," generally replied " that he could not be an Apprentice; because there was no Indenture:" But, once answered to that Question, " that he looked upon himself as a *Servant*." But the Master, being asked, said " he always considered him as " an Apprentice." That when he was nineteen, he went away from said *William Cholwich*, and left him for one Day; and returned again, at the Persuasion of his Uncle, the Day following; and told his Master " he would have Cloaths, as other Apprentices had;" (which his Master agreed to;) and then continued with his said Master, till he was 21 Years of Age.

The Court [of Sessions] being of Opinion " that the Pauper " is not settled in the said Parish of *Holberton*," doth therefore vacate the said Order: And the same is hereby vacated accordingly.

Mr. *Fanshaw* moved, on Saturday 27th June 1776, to quash the Order of Sessions, and affirm the original Order. He objected to the Pauper's having gained a Settlement in *Halwell* by this Apprenticeship; there never having been any Indenture.

Mr. *Hawtrey* was now to have shewn Cause: But he candidly acknowledged that it could not be defended.

Mr. Justice ASTON said, it could not be supported, either by having gained a Settlement in *Halwell* as an Apprentice, or as an hired Servant.

ORDER OF SESSIONS QUASHED :
ORIGINAL ORDER AFFIRMED.

It will not be improper to add one other Case; which, though it does not strictly come within the proposed Plan of this Collection, is nevertheless very nearly connected with it; and of which it is very convenient that Gentlemen in the Commission of the Peace should be apprized. They cannot well be so yet; because the Determination of it was so very recent, as to have been subsequent even to the very last of the Cases above reported; namely, on the last Day but one, of last Term. The Question was "Whether an APPEAL would lie " to the *Quarter Sessions*, from a VAGRANT-PASS: Or " whether an *Order of two Justices* was the *only* Method " by which the Vagrant was removeable *from* the " Place to which he had been passed." And the Court held " that the Paupers could not be removed away " from the Place to which the Pass had sent them, by " any other Method than a *common Order of Removal* " under the Hands and Seals of two Justices of the " Peace." The Name of the Case, and the Substance of it were as follows—

No. 263.

Rex versus Inhabitants of Ringwould.

Saturday 22d
June 1776.

TWO Justices made a Vagrant-Pass, in these Words,
viz.
Sussex—(to wit)—To the Constable Tythingman, or other
Officer of the Peace, of the Hundred of *Singlecross* in the
said

said County; and also to all Constables or other Officers whom it may concern; to receive and convey:
And to the Churchwardens, Chappelwardens, or Overseers of the Poor of the Parish of *Ringjoul* in the County of *Kent*, or either of them; to receive and obey.

Whereas *Edward Arnold* and *Mary* his Wife, and *Elizabeth Martha* and *Mary* his Children, were apprehended in the Parish of *Warnham* in the said County, as Rogues and Vagabonds, viz. Cha. Evera-
wandering without any visible Means of Livelyhood; and upon field.
Examination of the said *Edward Arnold*, taken before us, two of his Majesty's Justices of the Peace in and for the County of *Sussex*, upon Oath, (which Examination is hereunto annexed,) it doth appear that the legal Settlement of the said *Edward Arnold* and *Mary* his Wife, and *Elizabeth Martha* and *Mary* his Children, is in the said Parish of *Ringjoul* in the said County of *Kent*; These are therefore to require you the said Constable Tythingman or other Officers of the Peace of the said Hundred of *Singlecross*, to convey the said *Edward Arnold* and Family, to the Parish of *Eatonbridge* in the County of *Kent*; that being the first Parish in the next Precinct through which they ought to pass, in the direct Way to the said Parish of *Ringjoul*, to which they are to be sent; and to deliver them to the Constable or other Officer of such first Parish in such next Precinct, together with this Pass and the Duplicate of the Examination of the said *Edward Arnold*; taking his Receipt for the same. And the said *Edward Arnold* and Family are to be thence conveyed, in like Manner, to the Parish of *Ringjoul*, there to be delivered to some of the Churchwardens or Overseers of the Poor of the same Parish, to be there provided for according to Law. And you the said Churchwardens and Chappel-Wardens and Overseers of the Poor are hereby required to receive the said Persons, and provide for them as aforesaid. Given under our Hands and Seals, the 30th Day of *December* in the Year of our Lord 1775. John Shelly

Sussex—The Examination of *Edward Arnold*, a Rogue and Vagabond, taken on Oath before us, two of his Majesty's Justices of the Peace in and for the said County, this 30th Day of *December* in the Year of our Lord 1775: Who on his Oath saith "that he
" was born in the Parish of *Ringjoul* in the County of *Kent*,

“ where his Parents were legally settled, as he hath heard and verily believes;” and further, “ that he hath not done any Act to gain a Settlement in any Parish or Place, since his Birth.”

Sworn before us

John Shelley.

Cha Eversfield.

The Mark of ✕ *Edward Arnold.*

• I don't find it in the Villare Anglicum: But see Harris's History of Kent, pa. 250.

The Parish of *Ringwould* (for that is its * true Name) appealed to the Quarter-Sessions of *Suffex*: Who made the following Order.

Upon the Appeal of the Parishioners of the Parish of *Ringwould* in the County of *Kent*, to an Order or Vagrant-Pass bearing Date the 30th Day of *December* 1775, and made by Sir *Charles Eversfield* Baronet and *John Shelley* Esq; two of his Majesty's Justices of the Peace in and for the said County, whereby *Edward Arnold* and *Mary* his Wife, and *Elizabeth Martha* and *Mary* his Children, apprehended as Rogues and Vagabonds in the Parish of *Warnham* in the County of *Suffex* aforesaid, were conveyed from the said Parish of *Warnham* to *Ringwould* aforesaid; and upon hearing Counsel on both Sides; it is ordered by this Court, that the said Appeal be dismissed: And by the Court it is dismissed accordingly; subject nevertheless to the Opinion of the Court of King's Bench upon the following Case, that is to say—

Ringwould in *Kent*, Appellants—

To this Pass the Churchwardens and Overseers of *Ringwould* appealed. But the Court, upon hearing of Counsel, dismissed it; subject to the Opinion of the Court of King's Bench upon this Question—“ Whether an Appeal lies, from a Vagrant-Pass, to the Court of Quarter-Sessions; or whether the Parish of *Ringwould* should not take the Vagrant back, that the Overseers may pursue the Directions of the 17 G. 2. c. 5. by carrying the Vagrant before two Magistrates, in order to remove.”

Mr. *Peckham*, on Tuesday 11th June 1776, moved on Behalf of the Parish of *Ringwould*, to quash this Order of Sessions. He said, the Justices ought not to have dismissed the Appeal: For, that such an Appeal did lie; and there was no Necessity for the Parish

Parish of *Ringwould* to apply for an Order of two Justices, if they can shew to the Sessions, upon their present Appeal “that the Paupers are legally settled *elsewhere*, and *not* in their Parish.”

Mr. *Mansfield* now shewed Cause; and insisted, that *no* such Appeal lies; and that the Parish of *Ringwould* have no other Method of getting rid of these Vagrants thus passed to them, but by procuring an Order of two Justices for their Removal, as is usual in common Cases. All this is plain and clear, upon the Act of 17 G. 2. c. 5: And therefore the Sessions acted rightly, in dismissing the Appeal.

The 11th Section of this Act is express—“that the Person so sent shall not be removed from the Place to which sent, but by Order of two Justices, in the same Manner as other poor Persons are removed to the Place of their Settlement.” This is decisive. Besides, a Vagrant can’t be supposed settled in the Parish where he was apprehended as a Vagrant: And *no other* Parish could have an Opportunity of defending themselves, upon this Appeal; or, indeed, of knowing any Thing of the Matter.

The 26th Section gives an Appeal to the Quarter-Sessions, to “any Persons *aggrieved* by any Act of any Justice or Justices of the Peace out of Sessions, in or concerning the Execution of this Act of Parliament.” Who are meant by Persons *aggrieved*? It must mean such Persons as are, by the several Clauses of it, made subject to Punishment and Penalties: It could not be the Intention of the Act, in giving this Appeal to Persons *aggrieved*, to interfere at all about the Vagrants true and legal Place of Settlement. As soon as that could be known, he was to be sent to it in the *common ordinary* Method, by an Order of Removal: And from this there would, of Course, be an Appeal to the Sessions, if disputed.

Mr. *Peckham*, on the other Side, endeavoured to shew that the Appeal did lie; and that it was reasonable that it should. The Parish was certainly *aggrieved*, if a Pauper was sent to them, who did not belong to them, and whom they must maintain till they could find out where his legal Settlement was. It was more reasonable that that Burden should fall upon the Parish where he was found wandering: And upon Appeal to the Sessions, we may procure collateral Evidence, to shew the true Settlement from Witnesses whom we could not oblige to attend two Justices.

He referred to the *Practice* in many Counties; and also to a Case, which had been under the Consideration of this Court about twenty Years ago, upon the Application of Mr. *Humphrey*, where an Appeal was brought against a Pass; and there was a Mandamus to the Justices who had refused to hear it, commanding them to proceed upon it: *Newhaven*, he said, was one of the Parishes.*

* I find, amongst my Notes, and communicated to the Judges, a Case in *Michaelmas* Term 24^o G. 2. (*Thursday*, 8th November 1750.) *Rex v. Justices of Peace for Sussex*; where Sir *Richard Lloyd* and Mr. *Burrell* shewed Cause against a Mandamus to command the Justices to proceed upon such an Appeal. The Pass sent *Edward Marsh* alias *Butler*, and *Mary* his Wife, to the Parish of *Mechin*. *Mechin* appealed. The Justices refused to proceed. The Question was, "Whether an Appeal will lie from a Pass, on 17 G. c. 5. § 7, 8, 11." The Court thought, an Appeal would lie; and made the Rule for a Mandamus absolute.

See a good Deal about PASS-WARRANTS *unappealed from*, ante, No. 72. and No. 74. Pages 205 to 213. and 214. to 220.

The Question in these two Cases was "Whether, by 13 & 14 G. 2. c. 24. a Pass *unappealed from* be as conclusive as an Order of two Justices *unappealed from*." Which seems to take it for granted "that such a Pass *may* be *appealed from*." And in the whole Course of the Arguments, there was not the least Objection made, or ever hinted at, to the contrary. The Opinion of the Court was "that that Act of Parliament is *not* to be considered as putting a Pass upon the Foot of an Order of two Justices, in this Respect." It is worth while to look back to Pages 211, 212. where Lord Chief Justice *Lee* delivers the Opinion of the Court.

Note—At the Argument of the present Case of *Ringwould*, on 22d June 1776, only two Judges were present; LORD MANSFIELD being out of Court, and Mr. Justice WILLES upon the Road from *Bath*.

Mr.

Mr. Justice ASTON and Mr. Justice ASHHURST were, Both of them, of Opinion, that the present Act of Parliament did not mean to give such an Appeal as this is. It seemed to them to be inconsistent with the eleventh Section of it. If the Sessions should, upon such Appeal, enter into the Merits, they could not send him back to the Place where he was only a Vagrant, nor to any other: He can't be removed from the Place to which the Pass has sent him, by any other Method than an original Order of two Justices. The proper Subject of an Appeal is an *Adjudication*: A Pass only recites "that it appears upon Examination of the Vagrant." It is not such a positive Adjudication, as there is in an Order of Removal by two Justices. He is passed to the Place where he says he was settled. He can't be sent from it, but by an Order which adjudges him to be settled elsewhere: From which Adjudication an Appeal will properly lie to the Sessions. There is no Reason for an Appeal in such a Case, nor any Hardship upon the Parish to which the Vagrant is passed: For, as soon as they can find out where his legal Settlement is, (if it really is not with them,) they may remove him to it, by a common Order of Removal. The present Appeal is only a *general* Appeal from a Pass: It does not shew any Reason, nor make any particular Objection. The Sessions acted right in rejecting it.

They therefore DISCHARGED the RULE, and AFFIRMED the ORDER of SESSIONS.

As to Mr. *Peckham's* Case, they reserved Leave to him, to mention it again, if he could make it out.

THE COURT being now full,

Mr. Justice ASTON told Mr. *Peckham*, that they had been apprized of a Case * which verified his Citation of the Court's having formerly made a Rule absolute for a Mandamus commanding the Justices of *Sussex* to proceed upon an Appeal from a Pass: But he did not think that it interfered with their Opinion in the present Case; which Opinion was grounded upon the

Tuesday 25th
June 1776.

* V. ante.
pa. 844.

the *Necessity of an Order of Removal* made by two Justices; concerning which, there was not a Word said in *that* Case; and upon which, we now relie. Here is *no* Order of Removal: Nothing but a general Appeal, without any Reason given. This Pass has the Examination of the Vagrant annexed to it. If his Settlement is not at *Ringwould*, but elsewhere, they may apply for an Order of two Justices, to remove him to it: And that is the only Method by which it can be done.

F I N I S.

ORDERS

ORDERS of REMOVAL.

FURTHER CONTINUATION of SETTLEMENT-CASES, by Four more additional Years, ending in *July* 1776, 16 G. 3. and completing a Series of upwards of 43 Years.

Note—The last Case already printed (in the 3d Volume) is numbred 221; and was determined on the 4th *July* 1772, in *Trinity-Term* 12^o G. 3.

A Hiring at a Statute-Fair holden on the Day NEXT AFTER No. 222. *Michaelmas-Day*, to serve till *Michaelmas-Day* following, is a sufficient Hiring FOR A YEAR; the Custom and Usage of the Country being stated to be “to hire Servants in this Manner.” 722. 723. *V. ante*, No. 55. 20^e, 210. 214.

A Groom hired to look after *Running Horses* may gain a Settlement where his Master has no House nor Estate. 723 724.

Was a Case given up, without Argument. 725. No. 224.

One of the two Witnesses to a Parish-Certificate makes Oath, No. 225 before the Justices who allow it, “that he was *present with the* “*other Witness* and did see the Churchwardens and Overseers “severally sign and seal it.” But there was *no other* Proof of the *Hand-Writing* of the *other* Witness. This is *sufficient Proof* of the

the Attestation of that *other* Witness within 3 G. 2. c. 29. § 8. 727.

No. 226.

Parish-Poor Children may be bound Apprentices to Inhabitants of *other* Parishes. 731. They are settled where they served the last forty Days, under the Indenture. *ibidem*. *Fraud* shall not be presumed, unless found. *ibidem*.

No. 227.

A *Parol-Binding* will not gain an Apprentice a Settlement: It must be a Binding by *Indenture*. But the Court will not presume "that there was no Indenture;" especially, after the Death of the Master. 734. *V. ante*, No. 102. 104. and *postea*, No. 262.

No. 228.

A Bastard was born at *Toslock*: Soon after, the Mother married the putative Father, settled at *Isleham*. *Toslock* desired him "to get a Certificate from *Isleham*." He applied to *Isleham*, for a Certificate for himself, his Wife, and his SON; without informing them "that his Son was born a Bastard." They gave him a Certificate, acknowledging "that he and his Wife and Edward THEIR SON, were their Parishioners." (Nothing was stated about *Fraud*.) They are bound to receive the Bastard. 739. *V. ante*, No. 86.

No. 229.

A Master voluntarily offered and gave *Leave* to his Servant "to go away *thirteen* Days before the Expiration of his Year:" Which he did accordingly; and the Master voluntarily offered to pay, him and did pay him, his *whole Year's Wages*. This is a *sufficient Service for a Year*. So an Absence in the Middle of the Year is purged by the Master's taking him back again. But if Part of the Year is excepted out of the original Contract, this *pre-stipulated Absence* prevents gaining a Settlement. 742. 743. *V. ante*, No. 85. No. 147. No. 152. No. 158. No. 211. No. 214. and No. 216. and *postea*, No. 234.

No. 230.

The Orders were quashed without Defence. 745.

No. 231.

They were given up, as indefensible. *ibidem*.

No. 232.

A *Sequestrator* appointed by the Bishop, to the Cure of a Vicarage for three Years, or till the Bishop should release the same, does not gain a Settlement. 748.

A Certificate-

A *Certificate-Man* took a Lease of a Tenement, at the yearly^{No. 233.} Rent of 10*l.*: But *all Parish-Taxes* were to be paid by his Landlord. After which, *one single Person* of his Family asked and had Relief. The Justices removed the *whole* Family back. 1*st.* This is a *real and bonâ fide* Taking a Tenement of the yearly Value of ten Pounds, within 9 & 10 *W. 3. c. 11.* 2*dly*, Qu. Whether *any more* of the Family can be removed back, than the *Individual* who asked Relief? Mr. Justice ASTON thought, *not.* 752.

A *Militia-Man*, entered and sworn to serve as a Substitute for^{No. 234.} three Years, was about a Year and an half afterwards hired for a Year, to serve for a Year; but at the Time of his being so hired told his Mistress "that he was in the Militia, and that he might be about a Month in the Year to attend in that Duty;" and at the same Time told her "that he would pay a Man to serve in his Place, or else would make her an Allowance out of his Wages for the Time he was absent." He did attend the Militia, for 30 Days; then returned to his Service, and continued in it to the End of his Year, and made an Abatement out of his Wages, for the Time he was absent. He gained a Settlement. This Case is distinguishable from that of *Bishop's Hatsfield* (*ante*, No. 141.) where the original Hiring was with Liberty "to let Himself, for the Harvest-Month, to any other Person." 755. 756. *V. postea.* No. 246.

Two Persons jointly occupied a Tenement of eleven Pounds per^{No. 235.} Annum; but it was taken by the Pauper alone: The Landlord knew of no Connection between the Taker and the Person whom the Taker afterwards let in to be a Joint-Occupier with him; and the Pauper alone was personally responsible for the Rent. 758.

1*st.* The Pauper gained a Settlement by taking this Tenement. 758.

2*dly.* The Joint-Occupier gained none. *ibidem.*

3*dly.* The Credit and Ability to take a Tenement of the yearly Value of ten Pounds is the Criterion. *ibidem.*

4*thly.* Letting off a Part does not, therefore, destroy such Settlement. *ibidem.*

5*thly.* Fraud shall not be intended, if not stated. *ibidem*

A general indefinite Hiring is a Hiring for a Year: And if^{No. 236.} enough is stated, to shew a general Hiring; and Nothing to contra-

dict it, or to raise a *Presumption to the contrary*; the Presumption is "that it is a Hiring for a Year." 761. *V. infra*, No. 257.

No. 237.

A Woman, possessed of a *Leasehold Estate* in *Cheriton-Fitzpayne* for a Term of Years, devised to her Grandson *John Whitten* (the Pauper) "the Sum of ten Pounds a Year, to be paid by her Executors, out of her ESTATE, during his Life." This did not give *John Whitten* a Right to go and live upon it as his own: Nor could his doing so gain him a Settlement there. 764.

No. 238.

A Copy of the Parish-Register, and verbal Proof "who were considered as the Pauper's Father and Mother," were holden *sufficient Evidence* to prove the Pauper's Birth and identify him; though his Mother (who was subpœnaed) did not attend, to have given better Evidence. 766.

No. 239.

The *Apprenticeship of an Infant* may be dissolved, by Consent of *All* concerned in the Contract; but not without the Consent of *All* who were so concerned. 769. 770. Consequently,
1st, *Parish-Poor Children*, bound out pursuant to 43 *Eliz. c. 2. § 5.* must have the Consent of the *Parish-Officers*, as well as of the Parent, Master, and Child. *ibidem*.
2dly, *Other Indentures* may be cancelled, and the Apprenticeship determined, by Consent of Parent, Master, and *Infant-Apprentice*. *ibidem*

No. 240.

A *Certificate* will not bind the Parish that gives it; unless it be pursuant to the Directions of 8 & 9 *W. 3. c. 30.* As, for Instance, if it be not under the Hands and Seals of a *Majority* of the whole Number of Churchwardens and Overseers; whatever that whole Number may be. And Fraud can't be presumed, where not stated. 774.

No. 241.

The Place of a *Servant's Settlement* does not depend upon that of his Master: It is gained in the Place where he performs the last *forty Days Service*; whether it be a *public Place*, or any other. 778 to 781.

No. 242.

An Apprentice bound for three Years, without any Consideration, to a Slater at *Wrexham*, served under the said Indenture for nine Months: Then his Master died; and the Mistress said he
was

was “*at Liberty* to go where he thought proper.” The Indentures were not delivered up. He went to his Father at *Chirk*, and continued with him for two or three Years. His Settlement was, and remains, in *Wrexham*. 783.

The *Widow* of a Man who *died seised* of a House and Orchard in *South Stock*, entered and resided therein for seven Years, *without any Assignment of Dower*; and then married a *second Husband*; who resided in this House with her about two Years, and then died, leaving two Children by her. This MERE RIGHT of *Dower* gained a Settlement in *South Stock* to HERSELF; as she was (by *Magna Charta, c. 7.*) *irremoveable during forty Days*: but it could not communicate it to her *second Husband* or the *Children*. An Order removing her and the Children to *Painswick*, the Settlement of her *second Husband*, was therefore affirmed. 784. 785. No. 243.

The Paupers (two Sisters) resided at *Eversholt*, under a *Certificate* from *Wobourn*. A Person intitled to a long Term of Years in a *Cottage in Eversholt*, after having devised it to *Andrew Powell*, Son of their Father *William Powell*, adds, “that it is also his Will and Pleasure that the said *William Powell* (their Father) his Wife AND CHILDREN shall have free *Liberty and Power* during their natural Life to DWELL IN IT:” And accordingly, *William Powell* and his Wife, and their said Son *Andrew*, and the two Daughters (the Paupers) resided in it till *William Powell*’s Death. The Settlement of the *Daughters* (the two Paupers) is in *Eversholt*. 786. No. 244.

A Man certificated from *Warblington* to *Subdeanary*, hired a House and lived in *St. Olave*: where a Church-Rate was made in 1773; in which, his Name appeared thus—“*William Freeman* to bring Security L. 0 : 1 : 6.” and the one Shilling and Six-Pence was received by the Churchwarden. But the Churchwarden (who had given this Evidence) being cross-examined, it appeared that the Rate, when first made, was cast up, and no Sum of Money was set against the Name of *William Freeman* (the Pauper;) but that afterwards, the Churchwarden, being continued in his Office for the next Year, met the Pauper, who told him “he had got a Certificate from *Warblington*, and had delivered it to the Guardians of the Poor-House.” That thereupon, the said Churchwarden demanded of him and received of

him the Sum of one Shilling and Six-Pence, and afterwards (the same Day) *figured the said Sum of one Shilling and Six-Pence* in the Rate made in 1773: But finding "that the Pauper had no such Certificate," he offered to return the Money; and the Pauper refused to accept it. The Pauper was unanimously holden *not* to be properly (or indeed at all) *rated* to this Parish-Levy in *St. O-lave's*; but to remain settled in *Warblington*. 789.

Note—It seems that a *positive Adjudication* was understood to cure an *imperfect Complaint*. *ibidem*. and 790.

No. 246. A Shepherd hired for a Year, "subject to a Liberty of being ABSENT ELEVEN OR TWELVE DAYS in the *Sheep-shearing Season*," and to have the Benefit of what he got during that Time," does not gain a Settlement: For, the *Exception* is *Part of the original Contract*; and therefore can't be considered upon the Foot of *Leave of Absence* given by the Master. 792. 793. *V. ante*, No. 52. No. 141, No. 146. No. 209. No. 218.

No. 247. After a Case has been drawn up, and referred by the Sessions to the *Judge of Assize*; and he has *heard Counsel on both Sides*, and delivered *his Opinion* upon it; the Court will not take it up again, and enter into a fresh Discussion of it. 796. 797.

No. 248. The Pauper took a *Shop*, being *Part of a House*; which Shop had then no Door but that which opened into the Street, nor any Communication with any other Part of the House. He agreed for the Use of the Water and Necessary; (which were within the House:) And to these he had Access by another Door belonging to the House. He also agreed for his Sister's lodging in the Garret of the House, with the Landlady's Maid: (Which Sister was Part of his Family.) In less than a Month, he obtained Leave to open a Way through the Partition which separated the Shop from the Stair-Case. He constantly lay and resided in the Shop. His Landlady rented and resided in the House, and paid 30*l.* per *Annum* and all parochial Taxes for it. A Settlement was gained, as renting a *Tenement* of ten Pounds per *Annum* Value. 800. *V. ante*, No. 217.

No. 249. The Pauper went to *Welburn*, to live with *J. B.* (a Miller,) from *Whitsonide* to *Martinmas*: And after being there some Time,

Time, his Master agreed to give him a Guinea for the Work he had done and was to do *till Martinmas*. *At Martinmas*, he hired to the said *J. B.* for a Year, for four Guineas and Stockings. *Some Time before Lammas following*, the Pauper was obliged to quit that Service, on Account of his Health. This a *sufficient State* of a Settlement at *Welburn*. 802.

The Pauper, when twelve Years old, was by Indenture bound No. 250. an Apprentice by the Churchwardens and Overseers, for seven Years. The Pauper was a Party to the Indenture: And it was allowed, pursuant to the Statute. Near six Years after, the Pauper and his Master entered into the following Agreement—
 “that the Pauper, upon paying his Master twelve Pence a Week,
 “and providing for himself, should be at Liberty to work for his
 “own Benefit, during the Remainder of his Apprenticeship-
 “-Term; and the Master should find him a Loom, for the Re-
 “mainder of his Apprenticeship; and the Master to receive the
 “twelve Pence a Week, as a Satisfaction for his Service during
 “the Remainder of his Apprenticeship.” The Pauper was eighteen, at the Time of making the Agreement. Neither the Churchwardens nor Overseers were privy to it; nor was the Indenture cancelled or delivered up. The Pauper married, and removed to *Offerton*, and there worked, during the last forty Days before the Justices removed him from thence, with the same Tradesman who employed his Master: and the Master provided him a Loom, and knew with whom he was working; but did not give any particular Direction or Consent. The Pauper received the Profits, to his own Use. The Master demanded of him the twelve Pence a Week: But the Pauper was not able to pay him. The Court held, that the *Apprenticeship continued*; that the Pauper's Service in *Offerton* was a Service under it; and that his Settlement was in *Offerton*. 805.

A Pauper was born in *Halifax*, under a Certificate from *Skir-* No. 251.
coat. He bound himself, at 15, for four Years, to a Master in *Halifax*; and served there accordingly: And then his Master delivered up the Indenture to him, being then about nineteen. His Father had taken a Farm of 12*l.* a Year in *Warley*, and resided above forty Days upon it. The Pauper worked about the Country; but came to his Father's House at *Warley*, whenever he pleased, and kept his Holyday Cloaths there, and considered it as his

his *own Home*, till he was about twenty Years and nine Month old; when he married: But he always paid for what he had there, and was his *own Master*, to go and work for himself whenever he pleased. He has done no Act to gain a Settlement, since. He *remained Part of his Father's Family*; and, consequently, *acquired a derivative Settlement at Warley*: Which he would not have done, if he had *ceased to be Part* of it. 807. 808. 809. *V. ante*, No. 93.

No. 252. No Settlement is gained by *paying a Parish-Tax*, unless *rated* The being *named as Occupier* will not do, if the Landlord is the Person rated. 811. 812. *V. infra*, No. 254.

No. 253. The *Wife and Children* of an *Irishman* who has *no Settlement* of his own, can't be removed from the Place where *he is resident*. 817. *V. ante*, No. 39. and No. 118.

No. 254. If *not rated*, no Settlement can be gained. 818. *V. supra*, No. 252.

No. 255. Hiring by the *Month*, with Liberty to depart at a Month's Wages or a Month's Warning; and if he continued till Harvest-Time, to be at *Liberty*, during *Harvest-Month*, to let himself to any other Person, for the *Harvest-Month*; is no Hiring for a Year. 820.

No. 256. An *Apprentice* can't gain a Settlement by *Service in another Parish*, unless the Master *consents* to it: A *mere Knowledge of the Fact* does not imply his Consent to it. 822. *V. ante*, No. 91. No. 95. No. 250.

No. 257. A *general Hiring*, stipulating *no particular precise Time of serving*, is good. 824. *V. ante*. No. 107. No. 160. No. 236.

No. 258. The Pauper was hired for a Year in *Lansstephan*, and served there, till some Time before *St. Peter's-tide*; when his Master and Family removed to *Lowes*, in which Parish his Master rented another farm. The Pauper continued with his Master in *Lowes*, till 16th *January* following; when his Master and Family removed to *Lansstephan*, and afterwards constantly resided there; but the Master sent the Pauper back to *Lowes*, to thrash and

and look after the Master's Cattle. The Pauper stayed in *Lowess* two or three Nights and Days, and eat and lodged there; then returned again to *Lanstephan*, for two or three Days or a Week at a Time, and eat and lodged there; and then returned again to *Lowess* in like Manner as aforesaid; and so continued *between* the said Parishes, to the End of his Year, which was the 17th of May following. The Pauper *never continued forty Days together* in either of the two Parishes, after said 16th of January; but lived and resided as aforesaid, more than *forty Days in the whole*, in each. He verily believed, he resided *most Part* of the latter Part of his Service, in *Lanstephan*, and lodged there the *last Night*; and went from thence, in the Morning, to *Lowess*, and took some Cattle of his Master's from thence to the Hay-Fair, where he finished his Service. His last legal Settlement is in *Lanstephan*. 826.

The *Land-Tax* was demanded by the Parish-Officers; and they No. 259. shewed the Pauper a *Paper-Writing* (in order to inforce the Payment of it,) and *read over the Sum* he was to pay; and afterwards *distrained* for it. This is *sufficient Evidence*, to the Justices at Sessions, of his having been *rated*; without *producing* to them the *original Rate*. 828.

The *real annual Value* of the Tenement at the *Time* of the Pau- No. 260. per's occupying it, is the material Point, upon which to judge "Whether a Certificate-Person has gained a Settlement by taking a Tenement of ten Pounds a Year, under 9 & 10 W. 3. c. 11:" and not the *Rent* it was *actually let for*, or what it has been *subsequently let for* to another Tenant. 833.

An *Apprentice's Father* agrees to find his Son sufficient Meat, No. 261. Drink, Apparel, Physic, Surgery, Lodging, and all other Necessaries, during the Term: For which Purpose, the Master is to allow the Father four Shillings per Week, during the Term. This is not a "Thing given to the Master for his own Benefit," within 8 Ann. c. 9. § 45. for which a Duty is to be paid. 838.

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No. 262. A Settlement can't be gained by *Apprenticeship*, where there are *no Indentures*. 840. *V. ante*, No. 102. No. 104. and No. 227.

No. 263. Question "Whether an APPEAL *by the Parish*, lies to the "Sessions, from a *Vagrant-Pass*; or whether the Parish to which "the Vagrant is thereby sent, should not take the Vagrant back, "that the Overseers may pursue the Directions of 17 G. 2. c. 5. "by carrying the Vagrant before *two Justices*, in order to remove "him." Resolved, "that the ONLY *Method of removing him* "from the Place to which the Pass had sent him, is by an Order "of *two Justices*." 840 to 846.

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